

**STATE OF WEST VIRGINIA**

**PRELIMINARY PERFORMANCE REVIEW OF THE**

**Division of Protective Services**

**Capitol Complex Safety and  
Security Has Increased Since  
the Creation of the Division  
of Protective Services**

**Division Failed to Fulfill  
Statutory Mandates Timely**

**OFFICE OF LEGISLATIVE AUDITOR  
Performance Evaluation and Research Division  
Building 1, Room W-314  
State Capitol Complex**

**CHARLESTON, WEST VIRGINIA 25305  
(304) 347-4890**

**August 2001**

**PE01-13-212**

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**August 2001**

**WEST VIRGINIA LEGISLATURE**  
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John Sylvia  
Director

August 19, 2001

The Honorable Edwin J. Bowman  
State Senate  
129 West Circle Drive  
Weirton, West Virginia 26062

The Honorable Vicki V. Douglas  
House of Delegates  
Building 1, Room E-213  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Preliminary Performance Review of the *Division of Protective Services*, which will be presented to the Joint Committee on Government Operations on Sunday, August 19, 2001. The issues covered herein are "Capitol Complex Safety and Security has Increased Since the Creation of the Division of Protective Services" and "the Division Failed to Fulfill Statutory Mandates Timely."

PERD delivered a copy of the report to the Division on August 8, 2001. We conducted an exit conference with the Division of Protective Services on August 10, 2001. We received the agency response on August 15, 2001.

Let me know if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "John Sylvia".

John Sylvia

JS/wsc

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*Joint Committee on Government and Finance*

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## **Executive Summary**

The Division of Protective Services was created by the Legislature in 1998 to provide safety and security for the capitol complex and other state facilities. This is the Division's first Performance Evaluation. This review identifies two issues, briefly described below.

### **Issue 1: Capitol Complex Safety and Security Has Increased Since the Creation of the Division of Protective Services**

Capitol complex needs for security that are addressed by the Division vary from providing consultation to agencies and being present during the termination of an employee to making arrests. According to the Division's strategic plan, the Division officers investigate all crimes on State government grounds and spend much time investigating and prosecuting cases involving thefts of State and personal property. A security camera system has been installed and continues to be expanded. These cameras aid in providing unobtrusive observation that has increased security but has done so without giving any appearance of restricting access to government. Handheld metal detectors, as well as a walk-through version, have been purchased and although not used routinely, if a situation was determined to warrant a metal detector, the Division now has the means to use that type of hardware. While a contract security company is utilized, it is considered to be more visible and employees have to meet more employment qualifications before being placed.

### **Issue 2: Division Failed to Fulfill Statutory Mandates Timely**

The Division of Protective Services failed to fulfill three required mandates in a timely manner. Statute required the Division to propose legislative rules for promulgation and file with the Secretary of State an interagency agreement between the secretaries of the Department of Administration and the Department of Military Affairs and Public Safety. The interagency agreement was also to be delivered to the Governor and both houses of the Legislature by July 1, 1999. The third mandate required the Division to deliver monthly status reports to the House Speaker and the Senate President. The first two requirements were not met until this review began and the monthly status reports are still not provided to the House Speaker and Senate President. During the evaluation the Division began taking steps to come into compliance with statute.





## **Review, Objective, Scope and Methodology**

The preliminary performance review of the Division of Protective Services, formerly the Facilities Protection Division, is required by the West Virginia Sunset Law, Chapter 4, Article 10, Section 5. The Division was established for the purpose of providing safety and security to individuals who visit, conduct business or work at the capitol complex and other state facilities.

The objective of this review is to determine if the Division is meeting its mandates to propose legislative rules, provide the Legislature with monthly status reports and maintain and properly file an interagency agreement. Further the review examined if the Division's directive to provide for the safety and security of persons on the capitol complex is being met.

The methodology included discussions with the Division's Director and Deputy Director. A review was made of information provided by the agency including policies adopted by the Division and its strategic plan as well as expenditure schedules, governing statute, the contract for security guards and contact with the Secretary of State's office and both houses of the Legislature.

This review covers the period from the program's inception in 1998 through June 2001.



## **Background**

The Division of Protective Services was created in 1998 as the Facilities Protection Division. A year after creation it was given its current name. The purpose of the Division is to provide safety and security at the capitol complex and other state facilities.

The Division is organized under the Department of Military Affairs and Public Safety. There are seven positions in the Division, including the Director and Deputy Director and four other officers. Additionally the Division has contracted with a contract security company to provide security service for the entire capitol complex 24 hours a day, seven days a week, 52 weeks a year.

Pursuant to statute the Director of the Division is appointed by the Governor, with the advice and consent of the Senate. Statute requires the Director's qualifications include at least ten years of service as a law-enforcement officer with at least three years of supervisory law-enforcement position, the successful completion of supervisory and management training, and the professional training required for police officers at the West Virginia state police academy or an equivalent professional law-enforcement training at another state, federal or United States military institution.

The Division was funded at \$1,000,000 in FY 2000. The Department of Administration pays the contract security agency \$492,000 a year out of funds obtained from the complex meter parking, parking tickets and the parking fee state employees are charged.

There are 21 cameras in the parking garage, 45 external cameras and 118 internal cameras throughout the capitol complex. These cameras are monitored 24 hours a day, every day of the year.



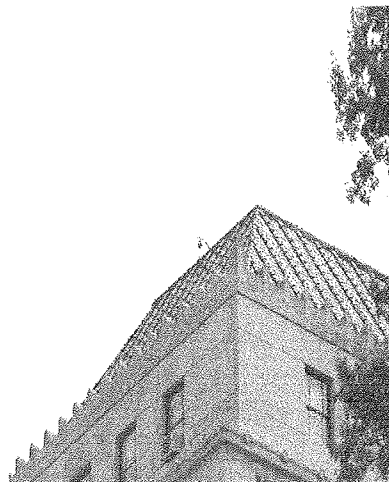
## **Issue 1: Capitol Complex Safety and Security Has Increased Since the Creation of the Division of Protective Services**

As a result of Joint Legislative Committee on Security meetings, security procedures at the capitol complex were noted and reported to the Senate President and House Speaker in 1997. Included in the report were incidents of offices broken into, the perception that there was little security at the complex, that there was no presence of security hardware or cameras, that there were no means of detecting weapons, that there was no central authority for security at the complex and employees were confused as to what they should do or who they should call when help was needed, and that government and its employees have a right to safety which is just as important as public access. **With the creation of the Division of Protective Services (DPS) in 1998 there have been numerous advancements that have enhanced security at the capitol complex.**

Capitol complex needs for security that are addressed by the Division vary from providing consultation to agencies and being present during the termination of an employee to making arrests. According to the Division's strategic plan, Division officers investigate all crimes on State government grounds and spend much time investigating and prosecuting cases involving thefts of State and personal property. Incidents the Division has logged are presented in Appendix B. The contract security company's statistics can be viewed in Appendix C. A security camera system has been installed and continues to be expanded (see pictures below). These cameras aid in providing unobtrusive observation that has increased security but has done so without giving any appearance of restricting access to government. Handheld metal detectors, as well as a walk through version, have been purchased and although not used routinely, if a situation was determined to warrant a metal detector, the Division now has the means to use that type of hardware. While a contract security company is still utilized, it is considered to be more visible and employees have to meet more employment qualifications before being placed.



**Entry Metal Detector**



**Security Camera on top of Building 3**

## **Command Station Installed and Equipped with Camera Monitors and Computers Linked to Offices with Proximity Card Access**

An initial stage in implementing security was the implementation of a 24-hour, 365 days per year manned capitol security command center. The command center is equipped with security cameras as well as a radio communication station for all security personnel. The television monitors have the capabilities of showing multiple views of the capitol complex.



**Security Command Center**



**Security Command Center**

The command center monitors forty-five strategically placed external cameras throughout the capitol complex. There are also twenty-one cameras in the new parking garage and thirty-five in various capitol complex buildings. The main building is being installed with eighty-three cameras. Security cameras video tape and the tapes are kept for one month.



**Security Camera outside of  
West Wing**



**Security Camera on  
Governor's Drive**



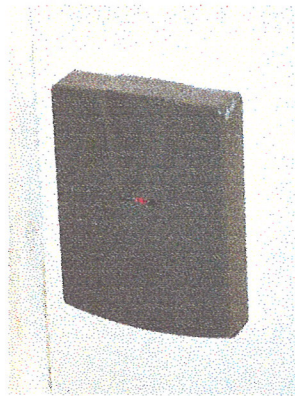


**Security Camera outside of Building 5**



**Camera on First Floor of Building 5**

The command center is also incorporated with a state-of-the-art digital radio communication system. This system is linked to all security personnel, which includes the Division of Protective Services and the contract security officers. The division's goal is to expand this system to include other state and federal agencies during special events and disasters. Proximity card access readers have been installed in several offices including Senate offices, the daycare center, the Diamond office building, and Building 4. Senate offices with proximity card access are linked electronically to the Division's command center where each authorized entry registers the date and time and the cardholder. Entries made without an authorized card also register date and time as well as indicate on a monitor in the command room that entry was made unauthorized.



**Proximity Card  
Access Reader**



**Senate Chambers  
Side Entrance with  
Access Card Reader**

Since its inception, the Division of Protective Services has expended nearly \$800,000 in equipment. Seventy percent of the expenditures has been on the purchase and installation of surveillance cameras (see Table 1).

**Table 1**  
**Security Equipment Purchases**  
**1999-2001**

Type of Equipment	1999	2000	2001*
Cameras		\$466,770	\$93,200
Weapons	\$3,969	\$740	\$3,017
Metal Detectors		\$24,795	
Communications	\$12,387	\$180,278	\$7,801
<b>Total</b>	<b>\$16,356</b>	<b>\$672,583</b>	<b>\$104,018</b>
* As of June 2001			

### **New Contract Security Personnel**

Shortly after the Division's creation, the supervision and authority of the contract security guards were transferred to the Division from the General Services Division within the Department of Administration. Per the required interagency agreement, the Department of Administration pays for the employment of security guards and the Department of Military Affairs and Public Safety has supervisory responsibility over the contract security guards.

When the Division obtained the supervision and authority of the contract security guards, it felt the existing contract companies hiring criteria was not adequate. The majority of the Division's initial investigations revolved around the misconduct of some security guards. Examination of the contract revealed the company did not require any type of qualifications to be a guard and additionally a high turnover of guards existed.

The current contract sets stringent standards including drug and alcohol tests, criminal background checks, and physical fitness testing. Competitive pay and benefits package are an attempt to create a more stable workforce.

### **Uniformity of Response Needed**

Centralizing security at the complex was a reason the Division was created. Consideration should be given by the Division to develop response guidelines for state agencies to follow in the



event of an emergency. Protecting employees from workplace violence is a growing concern. A review of security and emergency plans for the capitol complex reveals dated plans and a lack of planning for certain circumstances. There is a need for state agencies located in the capitol complex to have a uniform understanding of how to respond to certain types of emergencies, such as bomb threats, violent behavior from employees and the public, etc., and who to contact.

The General Services Division of the Department of Administration is the depository of emergency plans for some of the capitol complex buildings; however, the main Capitol building along with others are without a plan at all. Consideration should be given by the Division to provide all agencies within every building of the capitol complex with guidelines on appropriate responses to various types of emergencies.

## **Conclusion**

The Division of Protective Services was created to enhance security on the capitol complex. This has been accomplished through the installation of security equipment and through the presence of trained personnel. The agency responds to capitol complex employee requests for emergency and non-emergency police services, investigates reported criminal violations and assumes primary responsibility for policing the complex. The service the agency was created to provide is ongoing and thus the need for the agency is dependent on the continued need for the security service. To enhance security further, the Division should consider developing uniform response guidelines for all state agencies within the capitol complex.

## **Recommendation 1:**

*The Division of Protective Services should consider developing guidelines for uniform responses to various types of emergencies for all state agencies within the capitol complex.*



## **Issue 2: Division Failed to Fulfill Statutory Mandates Timely**

The Division of Protective Services failed to fulfill three required mandates in a timely manner. Statute required the Division to propose legislative rules for promulgation and file with the Secretary of State an interagency agreement between the secretaries of the Department of Administration and the Department of Military Affairs and Public Safety. The interagency agreement was also to be delivered to the Governor and both houses of the Legislature by July 1, 1999. The third mandate required the Division to deliver monthly status reports to the House Speaker and the Senate President. The first two requirements were not met until this review began and the monthly status reports are still not provided to the House Speaker and Senate President. During the evaluation the Division began taking steps to come into compliance with statute.

### **Legislative Rules Not Proposed Timely**

As stated in §15-2D-3(c)(1) of statute, the Division was to propose legislative rules for promulgation by July 1, 1999. As required in statute the rules are to include at a minimum a personnel policy and grievance procedures; the ranks and duties of officers of the division; and the qualification, training, and certification requirements of the Division including the basic academy training standards established by the governor's committee on crime, delinquency and prevention.

On June 27, 2001 the Division submitted rules for promulgation with the Secretary of State's Office. It is the opinion of the Legislative Auditor that these rules do not sufficiently fulfill the statutory requirements. The primary concern of the Legislative Auditor is the incorporation by reference in the proposed rules. The Division, in each of the four series of rules proposed, makes reference to other agency's rules or sections of statute (see Appendix D). Incorporating by reference lacks fluidity. If the document referred to changes, the rule in question does not change. The Division did not file with the proposed rule the documents it is incorporating. Should those documents change it may become difficult for someone to obtain the incorporated version in the event or even to know that the version that was in effect at the time the rule became effective is the incorporated version.

Other than this primary concern, there are other shortcomings with the rules that in all likelihood would be addressed during the rule making procedure. The proposed rules also fail to indicate who is authorized to be a law-enforcement officer which is of importance because according to statute the Division Director is to specify which members are authorized to carry weapons without a license. According to the proposed rule "member" is defined as any employee authorized as a law-enforcement officer. The Legislative Auditor feels these proposed rules have risen more questions than they have provided answers.

### **Interagency Agreement Not Properly Filed or Delivered Timely**

Statute, §15-2D-3(c)(2), requires the secretaries of the Departments of Administration and Military Affairs and Public Safety to enter into an interagency agreement enumerating the respective

rights and authorities of the departments under any contracts or subcontracts for security personnel. The Division was to file the agreement with the Secretary of State and deliver a copy to the Senate President's Office, House Speaker's Office and the Governor's Office by July 1, 1999. This agreement was not filed with the Secretary of State's office until May 25, 2001. The Senate President's Office, House Speaker's Office and the Governor's Office also did not receive a copy for almost two years or until May 25, 2001. This interagency agreement details the amount of money the contract security company is to be paid by the Department of Administration, that the supervision of the security company is charged to the Department of Military Affairs and Public Safety, and a clause to provide that the agreement is contingent upon available or appropriated funds.

## **Monthly Status Reports Have Not Been Delivered**

Another mandate required by §15-2D-3(c)(3) is for the Division to provide monthly status reports to the Senate President and House Speaker. This has not been done. Without monthly reports the Legislature is unable to determine whether or not it needs to adjust its security needs which under the provisions of statute do not exist. The monthly status reports to the Legislature would be useful in the Legislature's determination of the appropriated funds needed to provide the appropriate level of security and whether or not it is in the State's best interest to continue with the contract security currently in place or to have an increased number of trained law-enforcement personnel on the complex.

### **Recommendation 2:**

*The interagency agreement between the Secretary of the Department of Military Affairs and Public Safety and the Secretary of the Department of Administration, which delineates their respective rights and authorities under any contracts or subcontracts for security personnel, should be annually updated and filed with the required offices including the Secretary of State and each House of the Legislature.*

### **Recommendation 3:**

*The monthly status reports should be provided to the Senate President and House Speaker as mandated.*

**APPENDIX A**

**Transmittal Letter to Agency**



**WEST VIRGINIA LEGISLATURE**  
*Performance Evaluation and Research Division*

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Charleston, West Virginia 25305-0610  
(304) 347-4890  
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John Sylvia  
Director

August 8, 2001

C.E. "Chuck" Starcher, Director  
Division of Protective Services  
Building 1, Room 152-A  
Charleston, West Virginia 25305

Dear Mr. Starcher:

Pursuant to the West Virginia Sunset Law, we are transmitting a draft of the Preliminary Performance Review of the Division of Protective Services. The review will be presented to the Joint Committee on Government Operations on Sunday, August 19, 2001 from 2 to 4 p.m.. The meeting will take place in Tucker County at Canaan Valley Resort. It is routinely expected that a representative of the agency be present to respond to the report, and to answer any additional questions by the Committee.

Per your conversation with Ms. Mooney the exit conference is scheduled to take place on Friday, August 10, 2001 at 10:00 a.m. in our offices. During this time we can discuss any questions related to the report. We would appreciate a written response to the report by Wednesday, August 15, 2001.

If you have any questions, please contact the office.

Sincerely,

A handwritten signature in cursive script that reads "Brian Armentrout".

Brian Armentrout  
Research Manager

c: Joe Martin, Cabinet Secretary  
Department of Military Affairs and Public Safety  
Building 6, Room B122

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*Joint Committee on Government and Finance*

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**APPENDIX B**

**Division of Protective Services Statistics**



**Division of Protective Services Statistics**  
1999-2001

Type of Incident	1999	2000	2001
Assault and Battery	0	2	2
Attempted Breaking and Entering	0	2	0
Breaking and Entering	0	3	1
Auto Accident	0	1	2
Auto Larceny	1	3	2
Bomb Threat	2	0	1
Destruction of Property	7	5	7
Disruption of Government Process	2	0	0
Domestic Violence	1	0	0
Employee Discipline	0	2	2
Ethical Standards Violation	0	2	0
Forgery	0	3	0
Grand Larceny	2	8	1
Harassing Telephone Calls	3	4	1
Harassing Legislators	0	0	1
Harassment	1	4	0
Hit and Run	0	1	0
Intoxicated Persons	1	0	2
Lost Items	0	0	1
Petit Larceny	1	7	2
Possession of Illegal Substance	0	1	0
Possible Abduction	0	0	1
Questionable Accusation	0	1	0
Sexual Harassment	1	0	1
Solicitation of Funds	0	1	0
Stalking	1	1	0
Suspicious Item	1	0	0
Suspicious Activity	0	0	3

Tampering w/Computer	0	1	1
Theft	10	18	4
Threatening Letters	0	0	1
Threats	4	5	4
Trespassing	4	2	0
Unauthorized use of P-card	0	5	2
Vandalism	1	1	0

## **APPENDIX C**

### **Contract Security Company's Statistics**



### Contract Security Company Statistics

Incident	2000	2001
Assault & Battery		2
Auto Accident		2
Breaking and Entering		1
Destruction of Property	4	1
Door Improperly locked	1	
Door Jam, Could not lock	1	1
East wing dock door broken	17	
Emergency Medical Condition	5	2
Falling tree limbs	1	
Fighting		1
Firearm/Gunshot Inquiry	2	
Flooding in Building	4	
Found Personal Items	9	1
Harrassment	1	
Hit and Run		1
Individual, fall	3	4
Individual, fall downstairs	1	2
Intoxicated Person	2	2
Keys locked in car	1	
Lude public conduct	1	
Natural gas smell	1	
Outside lights not operating	1	
Parking lot broken gate	2	1
Skateboarders, Bikers, etc		2
Solicitation	1	
Stray animal	1	
Structural Damage		1

Suspicious Activity	1	
Unsecured Door	1	
Vandalism	2	1
Vehicle Door open	1	
Verbal Altercation	2	
West wing dock door broken	5	



## **APPENDIX D**

### **Division's Proposed Rules**



99CSR1

FILED

TITLE 99  
LEGISLATIVE RULES  
DIVISION OF PROTECTIVE SERVICES

2008 JUN 27 A 11: 12  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 1  
QUALIFICATION, TRAINING AND CERTIFICATION REQUIREMENTS FOR  
MEMBERS OF THE DIVISION

§99-1-1. General.

- 1.1. Scope. -- This legislative rule establishes the qualification, training and certification requirements for members of the division, which shall include the basic academy training standards established by the governor's committee on crime, delinquency and prevention.
- 1.2. Authority. -- W. Va. Code §§15-2D-3(c)(1)(A).
- 1.3. Filing Date. --
- 1.4. Effective Date. --

§99-1-2. Definitions.

- 2.1. "Division" means the Division of Protective Services.
- 2.2. "Members" means any employee of the division authorized as a law enforcement officer in accordance with Legislative Rule 149CSR2 effective July 1, 2000.

**SUMMARY OF PROPOSED RULE  
AND STATEMENT OF CIRCUMSTANCES REQUIRING THE PROPOSED RULE  
TITLE 99, SERIES 1**

The proposed rule reflects the required legislative rule for promulgation in accordance with the provisions of §§15-2D-3(c)(1)(A).

Sworn members of the Division of Protective Services shall be certified in compliance with Legislative Rule 149CSR2.

The Division of Protective Services  
June 26, 2001

99CSR2

FILED

2001 JUN 27 A 11:12

TITLE 99  
LEGISLATIVE RULES  
DIVISION OF PROTECTIVE SERVICES

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 2  
RANKS AND DUTIES OF OFFICERS WITHIN THE MEMBERSHIP OF THE  
DIVISION

§99-2-1. General.

1.1. Scope. -- This legislative rule establishes the ranks and duties of officers within the membership of the division.

1.2. Authority. -- W. Va. Code §§15-2D-3 (c)(1)(B).

1.3. Filing Date. --

1.4. Effective Date. --

§99-2-2. Definitions.

2.1. "Division" means the Division of Protective Services.

2.2. "Director" as described under West Virginia Division of Personnel Class Specifications 8950.

2.3. "Deputy Director" as described under West Virginia Division of Personnel Class Specifications 8951.

2.4. "Capitol Police Officer, Lieutenant" as described under West Virginia Division of Personnel Class Specifications 8954.

2.5. "Capitol Police Officer, Sergeant" as described under West Virginia Division of Personnel Class Specifications 8953.

2.6. "Capitol Police Officer" as described under West Virginia Division of Personnel Class Specifications 8952.

**SUMMARY OF PROPOSED RULE  
AND STATEMENT OF CIRCUMSTANCES REQUIRING THE PROPOSED RULE  
TITLE 99, SERIES 2**

The proposed rule reflects the required legislative rule for promulgation in accordance with the provisions of §§15-2D-3(c)(1)(B).

The Division of Protective Services will enlist members according to the West Virginia Division of Personnel Class Specifications.

The Division of Protective Services  
June 26, 2001

99CSR3

FILED

2001 JUN 27 A 11:11

TITLE 99  
LEGISLATIVE RULES  
DIVISION OF PROTECTIVE SERVICES

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

SERIES 3  
PERSONNEL POLICY OF THE DIVISION

§99-3-1. General.

- 1.1. Scope. — This legislative rule establishes the personnel policy of the division.
- 1.2. Authority. -- W. Va. Code §§15-2D-3(c)(1)(C).
- 1.3. Filing Date. —
- 1.4. Effective Date. —

§99-3-2. Definitions.

- 2.1. "Division" means the Division of Protective Services.
- 2.2. "Personnel policy" means the West Virginia Division of Personnel Administrative Rule, Chapter 29-6-10, Series 1.

**SUMMARY OF PROPOSED RULE  
AND STATEMENT OF CIRCUMSTANCES REQUIRING THE PROPOSED RULE  
TITLE 99, SERIES 3**

The proposed rule reflects the required legislative rule for promulgation in accordance with the provisions of §§15-2D-3(c)(1)(C).

The Division of Protective Services will comply with the West Virginia Division of Personnel "Personnel Policy."

The Division of Protective Services  
June 26, 2001



99CSR4

FILED

TITLE 99  
LEGISLATIVE RULES  
DIVISION OF PROTECTIVE SERVICES  
SERIES 4  
GRIEVANCE PROCEDURE OF THE DIVISION

2001 JUN 27 A 11: 12  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

§99-4-1. General.

- 1.1. Scope. -- This legislative rule establishes the grievance policy for the division.
- 1.2. Authority. -- W. Va. Code §§15-2D-3(c)(1)(C).
- 1.3. Filing Date. --
- 1.4. Effective Date. --

§99-4-2. Definitions.

- 2.1. "Division" means the Division of Protective Services.
- 2.2. "Grievance policy" means West Virginia Division of Personnel Grievance Procedure for State Employees, W. Va. Code §§29-6A.

**SUMMARY OF PROPOSED RULE  
AND STATEMENT OF CIRCUMSTANCES REQUIRING THE PROPOSED RULE  
TITLE 99, SERIES 4**

The proposed rule reflects the required legislative rule for promulgation in accordance with the provisions of §§15-2D-3(c)(1)(C).

The Division of Protective Services will comply with the West Virginia Division of Personnel "Grievance Procedures."

The Division of Protective Services  
June 26, 2001

**APPENDIX E**  
**Agency Response**





DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

**DIVISION OF PROTECTIVE SERVICES**

Building 1, Room 152-A  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305  
Telephone: 304-558-9911  
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BOB WISE  
GOVERNOR

**MEMORANDUM**

CHESTER E. STARCHER  
DIRECTOR

**TO:** JOINT COMMITTEE ON GOVERNMENT OPERATIONS  
Office of Legislative Auditor  
Performance Evaluation and Research Division  
Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

**FROM:** C. E. "CHUCK" STARCHER, DIRECTOR  
Division of Protective Services  
Building 1, Room 152-A  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

**DATE:** August 15, 2001

**SUBJECT:** **AGENCY RESPONSE** to the Preliminary Performance Review of the  
Division of Protective Services dated August 2001

Response to Issue 1 – Capitol Complex Safety and Security Has Increased  
Since the Creation of the Division of Protective Services.

Recommendation 1. *The Division of Protective Services should consider developing guidelines for uniform responses to various types of emergencies for all state agencies with the capitol complex.*

Since the creation of the Division of Protective Services in 1998, we have worked closely with all entities here at the Capitol Complex and other locations around the state working on issues such as criminal investigations, workplace violence, bomb threats, and numerous other security related issues.

The Division will continue to make itself available and strive to improve safety and security through out state government, to include attendance at state held seminars and through cooperation with state publications.

Attachment #1. State of West Virginia Capitol Complex Emergency Procedures. This is an example of the types of work we are generating by working with other state agencies. There is also emergency procedures published that cover state offices not located here at the Capitol Complex.

Response to Issue 2 – Division Failed to Fulfill Statutory Mandates Timely.

1. As required by statute, the Division has adopted the basic academy training standards established by the Governor's Committee on Crime, Delinquency and Prevention.
2. The Division worked with the West Virginia Division of Personnel in establishing ranks and duties of officers within the Division. These classifications are on file in the Division of Personnel Office.
3. Upon recommendation of the Division of Personnel in March of 1999, it was established that the existing State Personnel Policy and Grievance Procedures cover our Division. In addition to rules, as a law enforcement agency, we have existing work in progress creating an internal Operating Procedures that exceeds DOP policy and holds DPS employees to a higher standard.

The Division will work with the Legislative Rules Committee staff to develop acceptable language for the rules which we have filed.

Attachment #2. Ranks and duties of officers within the membership of the Division

Attachment #3. Letter from Division of Personnel by Acting Director Joe Smith dated March 25, 1999.

Attachment #4. Opinion given by Division of Personnel relating to State Personnel Policy and Grievance Procedures.

Recommendation 2. *The interagency agreement between the Secretary of the Department of Military Affairs and Public Safety and the Secretary of the Department of Administration, which delineates their respective rights and authorities under any contracts or subcontracts for security personnel, should be annually updated and filed with the required offices including the Secretary of State and each House of the Legislature.*

Although the interagency agreement was not filed properly, there has been an agreement in existence for the past three (3) years. These agreements are not self-renewing and must be renewed on a yearly basis. The Division of Protective Services will make proper filings in the future.

Recommendation 3. *The monthly status reports should be provided to the Senate President and House Speaker as mandated.*

When the Division was formed the question was asked as to what form of report was to be submitted. The example of the monthly report submitted by Commission on Special Investigations was used and it was decided that level of reporting was not necessary. The Division works very closely with the clerks of both houses on a daily and weekly basis taking care of any concerns that may come up. The Division will begin delivering monthly status reports to the Senate President and the House Speaker.

It is my understanding that a performance evaluation is used to determine whether an agency is operating in an efficient and effective manner and whether there is a demonstrable need for the continuation of the agency. The Division of Protective Services was created to assist in security issues on the Capitol Complex and as of this date, we have achieved great strides in this area.

CES/pjl





# **Attachment #1**

**Division of Protective Services**

Please refer to "State of West Virginia Capitol  
Complex - EMERGENCY PROCEDURES"  
(Fuschia flip chart)

# **Attachment #2**

**Division of Protective Services**





Department of Military Affairs and Public Safety

**DIVISION OF PROTECTIVE SERVICES**

Building 1, Room 152-A, 1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305  
Phone 558-9911 Fax 558-5604

*Letter  
dated 6/1/99*

Cecil H. Underwood  
Governor

Chester E. Starcher, Director  
Division of Protective Services

MEMORANDUM

TO: Ms. Patty Roush  
Division of Personnel

FROM: C. R. "Jay" Smithers *Ranker!*  
Division of Protective Services *Jay*

DATE: June 1, 1999

RE: Job Descriptions/Specifications  
Division of Protective Service

Pursuant to our telephone conversation this date regarding the job descriptions/specifications of the various positions within the Division of Protective Services, I find them to be accurate and acceptable. Any questions, please contact me.

Thank you and others within the Division of Personnel for your guidance and assistance.

CRS:amh



## DIRECTOR, DIVISION OF PROTECTIVE SERVICES

## Nature of Work

Under general direction, performs advanced administrative work in managing and directing the operation of the Division of Protective Services. Provides for safety, security and law enforcement at the capitol complex and other state facilities. The incumbent is also responsible for setting goals and developing plans for the agency; planning and determining budgetary and other resource needs; and is accountable for the total operation of the agency. Performs related work as required.

## Examples of Work

- Assesses and makes recommendations for safety and security needs for the state capitol complex and other state facilities.
- Develops policies and procedures governing the operation of the division.
- Plans, organizes and directs the work of subordinates.
- Ensures proper training of police force.
- Confers with government officials, other officials at the local, state, and federal levels and members of the general public regarding safety and security issues.
- Oversees any contractors for security and other services and assures compliance with terms and conditions of contracts.
- Prepares the division's budget request and assures compliance with budget allocations/spending limits.
- Oversees the preparation of reports and other documents regarding the operation of the division.
- Coordinates the purchasing of supplies, equipment and services necessary to maintain security at the capitol complex.

## Knowledge, Skills and Abilities

- Knowledge of the Law Enforcement Training Standards as established by the Governor's Committee on Crime, Delinquency and Correction.
- Knowledge of state and federal laws and regulations relating to law enforcement.
- Knowledge of principles and techniques of management including organization, planning, staffing, training, controlling, budgeting, and reporting.
- Ability to develop, manage and direct the activities of employees.

DIRECTOR, DIVISION OF PROTECTIVE SERVICES (CONT'D)

Knowledge, Skills and Abilities (cont'd)

Ability to analyze security problems and recommend feasible and effective solutions.

Ability to evaluate, develop and present legislation and regulations on agency programs and operations.

Ability to communicate clearly and effectively with public officials, the general public and the news media.

Minimum Qualifications

Training Graduation from an accredited four-year college or university.

Experience Ten years of full-time or equivalent part-time paid experience as a law enforcement officer in which three years was in a supervisory law enforcement capacity.

Special Requirement Successful completion of supervisory and management training and the professional training required for police officers at the West Virginia State Police Academy or an equivalent professional law enforcement training at another state, federal or United States military institution recognized by the Governor's Committee on Crime, Delinquency and Correction law enforcement training subcommittee as meeting the minimum standards of a basic police officer.

Established: 5/20/1999

Effective: 6/01/1999



## DEPUTY DIRECTOR, DIVISION OF PROTECTIVE SERVICES

## Nature of Work

Under administrative direction, performs complex administrative work in assisting the Director of the Division of Protective Services in planning, organizing, and directing the programs, functions and activities of the agency. Assists in providing for safety, security and law enforcement at the capitol complex and other state facilities. Performs related work as required.

## Examples of Work

Manages day-to-day operations of the agency in the director's absence.

Represents the director at various functions and meetings.

Recommends and coordinates safety and security needs and oversees investigation of criminal activity and other complaints for the state capitol complex and other state facilities.

Recommends, develops and implements policies and procedures governing the operation of the division.

Plans, organizes and directs the work of subordinates.

Ensures proper training of police force.

Monitors any contractors for security and other services and assures compliance with terms and conditions of contracts.

Recommends, prepares and revises the division's budget.

Prepares and reviews reports and other documents regarding the operation of the division, as necessary.

## Knowledge, Skills and Abilities

Knowledge of the Law Enforcement Training Standards as established by the Governor's Committee on Crime, Delinquency and Correction.

Knowledge of state and federal laws and regulations relating to law enforcement.

Knowledge of principles and techniques of management including organization, planning, staffing, training, controlling, budgeting, and reporting.

Ability to develop, manage and direct the activities of employees.

Ability to analyze security problems and recommend feasible and effective solutions.

Ability to communicate clearly and effectively with public officials, the general public and the news media.

DEPUTY DIRECTOR, DIVISION OF PROTECTIVE SERVICES (CONT'D)

Minimum Qualifications

Training Graduation from an accredited four-year college or university.

Experience Ten years of full-time or equivalent part-time paid experience as a law enforcement officer in which three years was in a supervisory law enforcement capacity.

Special Requirement Successful completion of supervisory and management training and the professional training required for police officers at the West Virginia State Police Academy or an equivalent professional law enforcement training at another state, federal or United States military institution recognized by the Governor's Committee on Crime, Delinquency and Correction law enforcement training subcommittee as meeting the minimum standards of a basic police officer.

Established: 5/20/1999

Effective: 6/01/1999

## CAPITOL POLICE OFFICER, LIEUTENANT

## Nature of Work

Under limited supervision, performs managerial and administrative duties necessary for the efficient security and law enforcement operation for the division; including, but not limited to, the planning, conducting and monitoring of all shift operations occurring within the area of assigned responsibility. Coordinates the activities and duties of division members and civilian employees assigned to his/her command. Performs related work as required.

## Distinguishing Characteristics

The rank of Lieutenant shall report to the Deputy Director and will supervise Sergeants and Capitol Police Officers. The Lieutenant will be in charge of all shift operations.

## Examples of Work

Coordinates all enforcement/security efforts relating to the reporting and investigation of security concerns, safety issues, criminal activity, and other complaints as well as vehicle and other accidents.

Facilitates the exchange of law enforcement information with the West Virginia State Police, municipal, county, and federal police agencies operating within the Division's jurisdiction.

Participates in law enforcement, security and safety efforts; investigates criminal complaints, vehicle and other accidents; patrol all areas of the Capitol Complex.

Conducts security and safety assessments and training seminars.

Conducts performance evaluations for all subordinate members and makes written recommendations for promotions, demotions, or other disciplinary action.

Responsible for the maintenance of discipline and the proper performance of duties for him/herself and all subordinates.

Responsible for the observance of division rules, regulations, policies, and other division directives both oral and written by all members and civilian employees assigned to his/her command and ensures the proper personal appearance of all members and civilian employees.

Responsible for the observance of the established division chain of command by all members and civilian employees assigned to his/her command.

## CAPITOL POLICE OFFICER, LIEUTENANT (CONT'D)

## Examples of Work (cont'd)

- Prepares and submits written reports to the Deputy Division Director of any misconduct, failure in the performance of duty, disobedience of orders, violation of any division policy, rule, regulation, or other directive, or any other action or lack of action on the part of any member.
- Reviews reports for compliance and responsible for the submission, form, completeness and quality of all reports submitted by members.
- Responsible for the general appearance, maintenance and security of all division offices, buildings and grounds.
- Responsible for the proper use, maintenance, necessary replacement and security of all general equipment assigned to and used by members.
- Responsible for the proper use, care and maintenance of all division owned, leased, or maintained transportation equipment.
- Maintains all records and reports required of him/her and subordinates by division policy, rules, regulations and other directives.
- Notifies Deputy Division Director regarding any information of extraordinarily serious incident or crime, riot, civil disturbance, wilful disruption of governmental processes, or other such emergency situation.
- May direct the temporary movement, placement or consolidation of members to meet requirements of any extraordinarily serious incident or crime, riot, civil disturbance, willful disruption of governmental processes, or other such emergency situation; commands or takes charge at the scene unless/until relieved of such responsibility by the deputy division director or division director.

## Knowledge, Skills &amp; Abilities

- Knowledge of security and safety trends.
- Knowledge of state and federal laws and regulations relating to law enforcement.
- Knowledge of appropriate means of exercising force against offenders.
- Ability to supervise and direct the work of others.
- Ability to operate police equipment and firearms.
- Ability to analyze security problems and recommend feasible and effective solutions.

## CAPITOL POLICE OFFICER, LIEUTENANT (CONT'D)

## Knowledge, Skills &amp; Abilities (cont'd)

Ability to operate and maintain electronic security equipment.  
Ability to take prompt effective action in time of crisis.  
Ability to communicate clearly and effectively with public officials and the general public.

## Minimum Qualifications

Training Graduation from a standard high school or the equivalent.

Experience Ten years of full-time or equivalent part-time paid experience as a certified law enforcement officer in which three years was in a supervisory law enforcement capacity.

Special Requirement Successful completion of supervisory and management training and the professional training required for police officers at the West Virginia State Police Academy or an equivalent professional law enforcement training at another state, federal or United States military institution recognized by the Governor's Committee on Crime, Delinquency and Correction law enforcement training subcommittee as meeting the minimum standards of a basic police officer.

Established: 5/20/1999  
Effective: 6/01/1999

## CAPITOL POLICE OFFICER, SERGEANT

## Nature of Work

Under limited supervision, performs administrative duties necessary for the efficient operation of the division personnel under his/her command; including, but not limited to, the planning, conducting and monitoring of all operations occurring within his/her shift. Coordinates the activities and duties of members and civilian employees assigned to his/her command. Performs related work as required.

## Distinguishing Characteristics

The Sergeant serves as Shift Sergeant. The rank of Sergeant shall report to the Lieutenant and will supervise Capitol Police Officers.

## Examples of Work

Prepares work schedules of all members and civilian employees within assigned shift.

Responsible to superiors for him/herself and subordinate members under their command for the efficient, effective and proper performance of all law enforcement and other police/security duties, the proper care and use of division issued, owned or leased property and for the maintenance of discipline on the part of all members assigned to their shift.

Conducts performance evaluations for all subordinate members and makes written recommendations for promotions, demotions, or other disciplinary action.

Participates in law enforcement, security and safety efforts, investigates criminal and other complaints, vehicle and other accidents; patrols all areas of the capitol complex and all other duties and responsibilities as legally required of, and permitted to, members of the division.

Ensures the observance of division rules, regulations, policies, and other division directives both oral and written by all members and civilian employees assigned to his/her command and ensures the proper personal appearance of all members and civilian employees.

Ensures the observance of the established division chain of command by all members and civilian employees assigned to his/her command.

## CAPITOL POLICE OFFICER, SERGEANT (CONT'D)

## Examples of Work (cont'd)

- Prepares and submits written reports to the deputy director of any misconduct, failure in the performance of duty, disobedience of orders, violation of any division policy, rule, regulation, or other directive, or any other action or lack of action on the part of any member.
- Reviews reports for compliance and responsible for the submission, form, completeness and quality of all reports submitted by members.
- Compiles and submits a safety/security analysis report.
- Maintains all records and reports required of them and their subordinates by division policy, rules, regulations and other directives.
- Maintains detailed shift duty log, accounting for all personnel assignments and documenting all incidents, complaints and messages.
- Notifies Division Lieutenant, upon discovery or receipt of information, regarding any information of extraordinarily serious incident or crime, riot, civil disturbance, willful disruption of governmental processes, or other such emergency situation.
- Responsible for the general appearance, maintenance and security of all division offices, buildings and grounds.
- Responsible for the proper storage, maintenance and security of all evidence stored or maintained by members under his/her command.

## Knowledge, Skills &amp; Abilities

- Knowledge of state and federal laws and regulations relating to law enforcement.
- Knowledge of appropriate means of exercising force against offenders.
- Ability to supervise and direct the work of others.
- Ability to operate police equipment and firearms.
- Ability to operate and maintain electronic security equipment.
- Ability to take prompt effective action in time of crisis.
- Ability to communicate clearly and effectively with public officials and the general public.

## CAPITOL POLICE OFFICER, SERGEANT (CONT'D)

## Minimum Qualifications

Training Graduation from a standard high school or the equivalent.

Experience Eight years of full-time or equivalent part-time paid experience as a certified law enforcement officer in which two years was in a supervisory law enforcement capacity.

Special Requirement Successful completion of supervisory and management training and the professional training required for police officers at the West Virginia State Police Academy or an equivalent professional law enforcement training at another state, federal or United States military institution recognized by the Governor's Committee on Crime, Delinquency and Correction law enforcement training subcommittee as meeting the minimum standards of a basic police officer.

Established: 5/20/1999  
Effective: 6/01/1999



## CAPITOL POLICE OFFICER

**Nature of Work**

Under general supervision, performs full-performance level security, patrol and investigative duties necessary for the effective fulfillment of the Division of Protective Service's mission, policies, goals and objectives. Provides law enforcement and police work involving the safeguarding of the public, state employees and state property and involving other hazardous, criminal, or unauthorized activities. Performs related work as required.

**Distinguishing Characteristics**

This is full-performance level police duties under the general supervision of the Capitol Police Officer, Sergeant. The Capitol Police Officer shall be responsible also to the Lieutenants, Deputy Director and Division Director.

**Examples of Work**

Performs all law enforcement efforts, investigation of complaints and accidents; patrols the Capitol Complex and other state facilities as legally required of, and permitted to, members of the division.

Submits all records and reports to the shift commander and shall be responsible for the form completeness and quality of all reports.

Notifies Shift Commander or, in their absence, the proper authority, upon discovery or receipt of information, regarding any information of extraordinarily serious incident or crime, riot, civil disturbance, willful disruption of governmental processes, or other such emergency situation.

Serves as liaison to the Governor's Office, Capitol Complex employees and the general public.

Documents, routes and disseminates all messages, information and citizen complaints.

Observes division rules, regulations and other division directives and ensures proper personal appearance.

Observes established division chain of command.

Responsible for the general appearance, maintenance and security of all division owned or leased facility or office area assigned to or occupied.

Responsible for the proper usage of all expendable supplies and equipment and the proper use, care and maintenance of all division owned or maintained transportation equipment.

CAPITOL POLICE OFFICER (CONT'D)

Examples of Work (cont'd)

- Responsible for the proper use, maintenance, necessary replacement and security of all personal issued general equipment and individual issue equipment.
- Responsible for the proper identification and security, in accordance with division rules and regulations and policies and procedures governing same, of all criminal evidence recovered, collected or otherwise obtained and stored or maintained by the division.
- May serve as Acting Shift Sergeant when designated by the Shift Sergeant.

Knowledge, Skills & Abilities

- Knowledge of state and federal laws and regulations relating to law enforcement.
- Knowledge of appropriate means of exercising force against offenders.
- Ability to operate police equipment and firearms.
- Ability to operate and maintain electronic security equipment.
- Ability to take prompt effective action in time of crisis.
- Ability to communicate clearly and effectively with public officials and the general public.

Minimum Qualifications

- Training Graduation from a standard high school or the equivalent.
- Special Requirement: (1) Attainment of at least twenty-one (21) years of age. (2) Successful completion of the professional training required for police officers at the West Virginia State Police Academy or an equivalent professional law enforcement training at another state, federal or United States military institution recognized by the Governor's Committee on Crime, Delinquency and Correction law enforcement training subcommittee as meeting the minimum standards of a basic police officer.

Established: 5/20/1999  
Effective: 6/01/1999

Code	Abbrev	EEO	Title	(Pay grade, range - year, month)
9030	EXECSEC	F	<u>EXECUTIVE SECRETARY</u>	
PG:	12	21,156	- 34,440	1763 - 2870

## 9030

**EXECUTIVE SECRETARY****Nature of Work**

Under limited supervision, performs highly responsible advanced level administrative support work in providing assistance to a department secretary. Work involves independent responsibility for making limited policy interpretations in dealing with the public and acting with authority on office management and administrative functions in the absence of the supervisor. Responsibilities include high level secretarial, clerical, office management and general administrative duties with primary emphasis on relieving the supervisor of administrative details. Work is performed in strict confidence and in accordance with modern professional secretarial principles and techniques. Supervision may be exercised over subordinate office clerical personnel. Performs related work as required.

**Examples of Work**

Performs a variety of administrative tasks for the supervisor including organizing an appointment calendar, screening visitors and telephone calls, making travel arrangements, answering routine correspondence, accumulating information for reply to requests by correspondence and/or telephone. Takes dictation of a confidential and technical nature from the supervisor or transcribes dictation from a transcribing machine.

Types correspondence, reports, forms, contracts, bulletins, manuals, narratives and other documents and related office material which may require a familiarity with specialized terminology such as medical and/or legal terms.

Independently composes and types correspondence for the supervisor's signature from general instruction or marginal notes.

Supervises the clerical operation of the office; directs the clerical staff on departmental or divisional policies and procedures.

Gathers and computes information for the supervisor on special assignments, regular reports, budgets or speeches.

Schedules conferences and meetings; contacts individuals to participate, assuring convenient time for all those involved or arranges time changes convenient to all participants, arranges meeting facilities, transportation for guest participants and/or speakers; takes minutes of meetings and transcribes minutes and assures appropriate distribution of copies.

Maintains and organizes the office files; assures that proper security measures are followed concerning confidential files and materials; maintains supervisor's manuals, regulations, staffing patterns, etc.

Assists the supervisor in planning and analyzing specific office problems affecting operations; advises the supervisor of the current situation and problems resulting; and makes recommendation of possible solutions.

**Knowledge, Skills and Abilities**

Knowledge of modern office procedures, practices, and equipment.

Knowledge of agency rules, regulations, and procedures.

Ability to maintain detailed records according to a prescribed format.

Ability to retrieve and utilize information from multiple sources to complete assignments.

Ability to compose correspondence dealing with routine inquiries regarding the services or procedures of the organizational unit.

Ability to plan, schedule, assign and review the work of other employees.

Ability to take dictation or operate a transcribing machine.

Ability to deal with the public in an effective and courteous manner, and to establish and maintain effective working relationships with superiors, subordinates, associates, other organizations, and the general public.

Ability to analyze operational procedures and prepare reports of findings and recommendations for modifications.

Ability to operate standard office equipment.

Ability to add, subtract, divide, and multiply whole and fractional numbers.

**Minimum Qualifications**     [\[Top\]](#)

**Training:**

Graduation from a standard four-year high school or equivalent.

**Experience:**

Six years of full-time or equivalent part-time paid secretarial experience, two years of which must have included administrative support or complex clerical duties.

**Substitution:**

Successful full-time study in an accredited college or university or related business or vocational school training may be substituted through an established formula for the required experience outside the area of assignment.

**Established: 10/16/90**

**Revised: 12/1/91**

**Effective: 12/1/91**

[\[Top of Page\]](#)

# **Attachment #3**

**Division of Protective Services**



# West Virginia Division of Personnel

Edison L. Casto, Director

STATE PERSONNEL BOARD

Roger Morgan, Chairman

Rev. Paul J. Gilmer ♦ Elizabeth D. Harter

Sharon Lynch ♦ Eugene Stump

March 25, 199

Carl R. Smithers, Jr., Deputy Director  
 State Facilities Protection Division  
 Department of Military Affairs and Public Safety  
 State Capitol Complex  
 Building 1, Room 152-A  
 Charleston, West Virginia 25305

Dear Mr. Smithers:

This memorandum is in response to your request that I provide you with a draft of a three-tiered employee grievance procedure for the Department of Military Affairs and Public Safety (MAPS) to use when responding to grievances which may be filed by employees of the new State Facilities Protection Division (also referred to as the Division of Protective Services), which was recently created by the State Legislature and placed within your department. Your request was prompted, no doubt, by the language found in Senate Bill 170, specifically in Section § 15-2D-3(5)(iii), which, in describing the duties and responsibilities of the director of the new division, states that the director shall, "establish a personnel policy and grievance procedure."

While it is quite admirable for you to strive to comply with the provisions of the bill as quickly as possible, I do not believe it is necessary to create an entirely new grievance procedure for the classified-exempt employees of the Division of Protective Services, similar to the one that exists for the classified-exempt, uniformed employees of the West Virginia State Police, who are also within MAPS. Even though the employees of the Division of Protective Services are law enforcement officers much like the State Police, I do not believe Senate Bill 170 exempted them from the jurisdiction of the Education and State Employees Grievance Board or deprived them of the right to pursue a grievance through the Grievance Procedure For State Employees found in *W. Va. Code* § 29-6A-1, et. seq. The State Police developed their own grievance procedure because *W. Va. Code* § 29-6A-2(e), Grievance Procedure For State Employees, specifically exempts them from coverage and *W. Va. Code* §15-2-6, in clear and unambiguous language, requires that a special grievance procedure, just for State Police, be developed. The same is not true for employees of the Division of Protective Services — Senate Bill 170 does not exempt them from the Grievance Procedure For State Employees — it only states that their director has to provide them with a procedure.

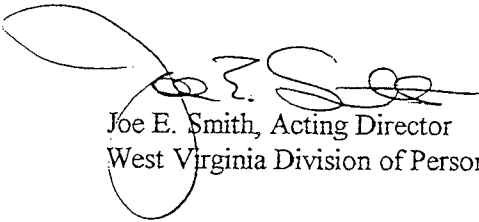
Carl R. Smithers, Jr.  
March 25, 1999  
Page 2

Some may suggest, since employees of the State Police are classified-exempt, placed within MAPS and have their own grievance procedure, that the employees of the Division of Protective Services, who are classified-exempt and within MAPS, should similarly have their own grievance procedure. However, this type of seductive logic is easily refuted by the fact that we have had, over the years, many classified-exempt employees avail themselves of the Grievance Procedure For State Employees and, to my knowledge, the Grievance Board has never denied any of these employees redress solely because of their classified-exempt status.

Therefore, please find attached a copy of the Grievance Procedure For State Employees, for use by the director and employees of the Division of Protective Services. I do not believe it is necessary for you or the director of the new division to, as the old saying goes, "reinvent the wheel," if you don't have to, especially when a formal grievance procedure already exists.

If you have any questions or need further information regarding this response, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe E. Smith". The signature is fluid and cursive, with a large loop at the beginning and end.

Joe E. Smith, Acting Director  
West Virginia Division of Personnel

JES:JDS  
(sen170.wpd)

Attachments





# **Attachment #4**

**Division of Protective Services**

*The second primary concern of the Legislative Audit is that according to § 15-2D-3(b) all employees of the Division are to be **classified exempt**. However, in the rules proposed grievance procedures and personnel policy for **classified** employees have been adopted. If employees are treated as if they are **classified**, but the Legislature still intends for them to be **exempt**, then the promulgation of these rules could result in potential problems.*

The statute establishing the Division of Personnel, *W.Va. Code* § 29-6-10(1) provides:

The board shall have the authority to promulgate, amend or repeal rules, according to chapter twenty-nine-a [§ 29A-1-1 et seq.] of this code, to implement the provisions of this article:

(1) For the preparation, maintenance and revision of a position classification plan for all positions in the classified service and a position classification plan for all positions in the **classified-exempt service**, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class. Except for persons employed by the governing boards of higher education, all persons receiving compensation as a wage or salary, funded either in part or in whole by the state, are included in either the position classification plan for classified service or **classified-exempt service**. After each such classification plan has been approved by the board, the director shall allocate the position of every employee in the classified service to one of the classes in the classified plan and the position of every employee in the **classified-exempt service** to one of the positions in the **classified-exempt plan**. Any employee affected by the allocation of a position to a class shall, after filing with the director of personnel a written request for reconsideration thereof in such manner and form as the director may prescribe, be given a reasonable opportunity to be heard thereon by the director. The interested appointing authority shall be given like opportunity to be heard. (emphasis added).

Thus, position classification plans are specifically authorized for classified-exempt employees without jeopardizing their status. The adoption of the classification plan for classified-exempt employees does not, in and of itself, confer classified status to the affected employees. Additionally, since at least 1968, when the Board of Public Works adopted the Civil Service attendance and leave regulations, both classified and classified-exempt employees of most state agencies, including constitutional officers, have been under the provisions of similar leave policies.

The statute establishing the State Employees Grievance Procedure, *Code* § 29-6A-2 provides the following definitions:

Employee means any person hired for permanent employment, either full or part-time, by any department, agency, commission or board of the state created by an act of the Legislature, except those persons employed by the board of regents

[abolished] or by any state institution of higher education, members of the department of public safety [West Virginia state police], any employees of any constitutional officers unless they are covered under the civil service system and any employees of the Legislature.

Employer means that state department, board, commission or agency utilizing the services of the employee covered under this article.

Thus, arguably employees of the Division of Protective Services are covered by the provisions of this procedure. To adopt any other grievance mechanism may be duplicating coverage and likely result in legal entanglements.



# **Attachment #5**

**Division of Protective Services**



STATE OF WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION  
OFFICE OF THE CABINET SECRETARY  
BUILDING 1 ROOM E119  
1900 KANAWHA BOULEVARD, EAST  
CHARLESTON, WV 25305-0120

Office  
of The Secretary  
AUG 31 1999  
Dept. of MAPS

CECIL H. UNDERWOOD  
GOVERNOR

JOSEPH F. MARKUS  
CABINET SECRETARY

Memorandum

Date: August 30, 1999  
To: Honorable Otis G. Cox, Jr., Secretary  
Military Affairs and Public Safety  
From: Janet Shelton, Executive Assistant  
Re: Memorandum of Understanding

In his absence, Secretary Markus asked that I forward the enclosed Memorandum of Understanding regarding payment of the Capitol Complex security force to you for execution.

Two originals are enclosed. Please retain one and return the other to Secretary Markus.


If you have question, please call me at 558-1247.

Encl.

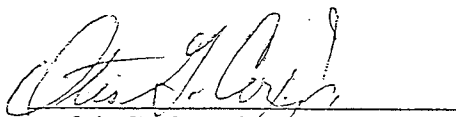
cc: Mr. Chuck Starcher

MEMORANDUM OF UNDERSTANDING BETWEEN THE WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION AND THE WEST VIRGINIA  
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

1. This Memorandum of Understanding constitutes an agreement between the West Virginia Department of Administration and the West Virginia Department of Military Affairs and Public Safety regarding the payment of the Security Guard force at the Capitol Complex, implementing the provisions of West Virginia Code §§ 5A-4-3, -4 and the provisions of West Virginia Code §§ 15-2D-1, *et seq.*
2. The West Virginia Department of Administration agrees to pay approximately Four Hundred Ninety-two Thousand Dollars (\$492,000) for the employment of Security Guards for the period from July 1, 1999 through June 30, 2000. This agreement shall not be self-renewing.
3. Responsibility for the supervision of the Security Guard force at the Capitol Complex is hereby transferred from the West Virginia Department of Administration to the West Virginia Department of Military Affairs and Public Safety.
4. This agreement shall be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise available. In the event funds are not available or appropriated, this agreement shall terminate without penalty on June 30, 2000, and thereafter this agreement shall be null and void. Non-appropriation or non-funding shall not be considered an act of default.



Joseph F. Markus, Secretary  
Department of Administration



Otis G. Cox, Jr., Secretary  
Department of Military Affairs  
and Public Safety





MEMORANDUM

Date: July 5, 2000

To: The Honorable J. R. Buckalew, Secretary  
Department of Administration

From: C. E. Starcher, Director  
Division of Protective Services

Re: Memorandum of Understanding

It is necessary to have a signed Memorandum of Understanding on file regarding payment of the Capitol Complex security force. Three originals are enclosed. Please sign the three memorandums and return to this office. I will obtain the signature of Secretary Cox and will then return an original to your office for your records.

If you have any questions, please call me at 558-9911.

Attachment

MEMORANDUM OF UNDERSTANDING BETWEEN THE WEST VIRGINIA  
DEPARTMENT OF ADMINISTRATION AND THE WEST VIRGINIA  
DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

1. This Memorandum of Understanding constitutes an agreement between the West Virginia Department of Administration and the West Virginia Department of Military Affairs and Public Safety regarding the payment of the Security Guard force at the Capitol Complex, implementing the provisions of West Virginia Code §§ 5A-4-3, -4 and the provisions of West Virginia Code §§ 15-2D-1, et seq.

2. The West Virginia Department of Administration agrees to pay approximately Four Hundred Ninety-two Thousand Dollars (\$492,000) for the employment of Security Guards for the period from July 1, 2000 through June 30, 2001. This agreement shall not be self-renewing.

3. Responsibility for the supervision of the Security Guard force at the Capitol Complex is hereby transferred from the West Virginia Department of Administration to the West Virginia Department of Military Affairs and Public Safety.

4. This agreement shall be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise available. In the event funds are not available or appropriated, this agreement shall terminate without penalty on June 30, 2001, and thereafter this agreement shall be null and void. Non-appropriation or non-funding shall not be considered an act of default.

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Jack R. Buckalew, Secretary  
Department of Administration

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Otis G. Cox, Jr., Secretary  
Department of Military Affairs  
and Public Safety

## DIVISION OF PROTECTIVE SERVICES

Building 1, Room 152-A  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305  
Telephone: 304-558-9911  
Fax: 304-558-5604

BOB WISE  
GOVERNOR

CHESTER E. STARCHER  
DIRECTOR

### MEMORANDUM

**TO:** Gregory A. Burton, Secretary  
Department of Administration

**FROM:** C. E. "Chuck" Starcher  
Director

**DATE:** May 24, 2001

**SUBJECT:** Memorandum of Understanding

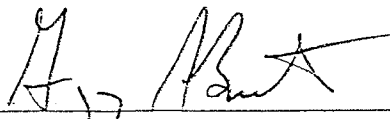
It is necessary to have a signed Memorandum of Understanding on file regarding payment of the Capitol Complex security force. Three originals are enclosed. Please sign the three memorandums and return to this office. I will obtain the signature of Secretary Martin and will then return an original to your office for your records.

If you have any questions, please call me at 558-9911.

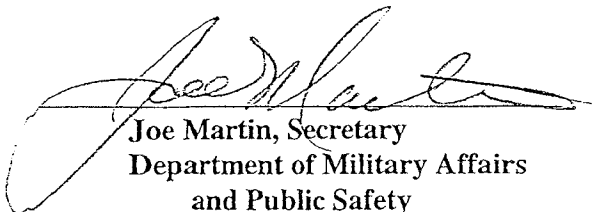
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2. The West Virginia Department of Administration agrees to pay approximately Four Hundred Ninety-two Thousand Dollars (\$492,000) for the employment of Security Guards for the period from July 1, 2001 through June 30, 2002. This agreement shall not be self-renewing.
  
3. Responsibility for the supervision of the Security Guard force at the Capitol Complex is hereby transferred from the West Virginia Department of Administration to the West Virginia Department of Military Affairs and Public Safety.
  
4. This agreement shall be continued in succeeding fiscal years for the term of the agreement, contingent upon funds being appropriated by the Legislature or otherwise available. In the event funds are not available or appropriated, this agreement shall terminate without penalty on June 30, 2002, and thereafter this agreement shall be null and void. Non-appropriation or non-funding shall not be considered an act of default.



Gregory A. Burton, Secretary  
Department of Administration



Joe Martin, Secretary  
Department of Military Affairs  
and Public Safety