

VIRGINIA CODE COMMISSION

Tuesday, April 4, 2017 - 10:00 a.m.
General Assembly Building, 6th Floor
Speaker's Conference Room
Richmond, Virginia 23219

1 **MEMBERS PRESENT:** John S. Edwards; Gregory D. Habeeb; Ryan T. McDougle; Robert L.
2 Calhoun; Charles S. Sharp; Leslie L. Lilley; E.M. Miller, Jr.; Thomas M. Moncure, Jr.; Chris Nolen; G.
3 Timothy Oksman; Mark Vucci

4 **MEMBERS ABSENT:** James M. LeMunyon, Carlos L. Hopkins

5 **STAFF PRESENT:** David Cotter, Lilli Hausenfluck, Jane Chaffin, Karen Perrine, Division of
6 Legislative Services (DLS)

7 **OTHERS PRESENT:** Jeff Palmore

8 **Call to order:** Senator Edwards, chair, called the meeting to order at 10:05 a.m.

9 **Approval of minutes:** The minutes of the November 21, 2016, meeting of the Commission as printed
10 and distributed to the members were approved without objection.

11 **Sections to be included in the Code of Virginia:** David Cotter stated that at the time of the 1998
12 recodification of Title 17, the title contained a number of sections designated as "not set out." The issue
13 is whether the act of assembly enacting the recodification (Chapter 872 of the 1998 Acts) repealed all 10
14 of the sections not set out in Title 17 or only the two specifically included in the eleventh enactment
15 clause of the act. Mr. Cotter researched this issue and concluded that the plain language of the title
16 revision bill, as reflected in the tenth and eleventh enactment clauses, establishes that only two of the
17 "not set out" sections, §§ 17-117.1 and 17-118.1, were repealed. He indicated that the Commission's
18 recodification report supports the conclusion that the General Assembly did not intend to make
19 substantive changes to the law and that §§ 17-125, 17-126, 17-126.1, 17-126.2, 17-126.3, 17-126.4, 17-
20 126.5, and 17-126.6 were not repealed. These remaining eight sections have not been otherwise
21 amended or repealed since 1998 and remain valid provisions of Virginia law. Mr. Cotter stated that it is
22 within the discretion of the Commission to set out the text of the sections in the Code.

23 Mr. Cotter suggested that in addition to deciding whether to set out §§ 17-125, 17-126, 17-126.1, 17-
24 126.2, 17-126.3, 17-126.4, 17-126.5, and 17-126.6, the Commission may want to determine if any of the
25 13 sections currently in Title 16.1 as "not set out" should be placed into the Code. The sections in Title
26 16.1 that are currently "not set out" are §§ 16.1-69.2, 16.1-69.3, 16.1-69.4, 16.1-69.7:1, 16.1-69.13,
27 16.1-69.35:1, 16.1-70, 16.1-70.1, 16.1-71, 16.1-72, 16.1-73, 16.1-74, and 16.1-75.

28 Mr. Cotter reviewed his recommendation for each of the sections in both titles. In response to a question
29 from Delegate Habeeb, the Commission discussed adding a generic provision to the Code to address the
30 issue of venue for the prosecution of a crime committed in the courthouse of one locality where such
31 courthouse is physically located in another jurisdiction. Mr. Cotter suggested establishing concurrent
32 jurisdiction for both localities over such prosecutions. He further explained that Virginia law requires
33 that the courts be in the "county seat," and the county seat is where the courthouse is located. The
34 Commission supported a generic provision in the Code to address this issue instead of the locality-by-
35 locality approach currently in the Code.

36 Delegate Habeeb moved that the full text of the sections that are not obsolete be set out in the Code.
37 Those sections to be set out in full are §§ 16.1-69.2, 16.1-69.3, 16.1-69.4, 16.1-69.7:1, 16.1-69.35:1, 17-
38 125, 17-126.2, 17-126.3, 17-126.4, 17-126.5, 17-126.6.

39 Senator Edwards asked Mr. Cotter to prepare (i) a bill to add a generic section to the Code of Virginia as
40 previously discussed and (ii) an obsolete laws bill to repeal the sections and provisions reported by Mr.
41 Cotter as obsolete (§§ 17-126 and 17-126.1, paragraph 1 of § 17-126.2 (pertaining to Henry County),
42 and §§ 16.1-69.13, 16.1-70, 16.1-70.1, 16.1-71, 16.1-72, 16.1-73, 16.1-74, and 16.1-75. The motion was
43 seconded by Judge Lilley and passed, with Mr. Miller abstaining.

44 **Request from House Courts of Justice Committee to modify catchlines of §§ 18.2-479.1 and 18.2-**
45 **460 of the Code of Virginia:** David Cotter stated that House Courts of Justice Committee considered
46 and tabled Senate Bill 1474 to amend § 18.2-479.1 of the Code of Virginia. The committee requested
47 that the Commission review the catchlines for §§ 18.2-479.1 and 18.2-460 of the Code for accuracy and
48 consider removing "resisting arrest" from § 18.2-479.1 and adding it to § 18.2-460. Mr. Cotter noted that
49 in 2011, the Commission reviewed a similar request from the Henry County Commonwealth's Attorney.
50 At that time, the Commission added "fleeing from a law-enforcement officer" to the catchline of § 18.2-
51 479.1 but retained "resisting arrest."

52 The Commission discussed changing the section catchline of § 18.2-479.1 to more clearly describe the
53 content of the section. The language of § 18.2-479.1, which states that it is unlawful for a person to flee
54 from a law-enforcement officer to avoid an arrest, is often overlooked by police and magistrates who
55 instead focus only on the section catchline. Defendants are often erroneously charged with § 18.2-479.1
56 when the appropriate charge would be § 18.2-460, which prohibits obstruction of a law-enforcement
57 officer in the performance of his duties.

58 Mr. Moncure commented that § 1-217 of the Code of Virginia provides that headlines of sections are
59 intended as mere catchwords to describe the content of a section but are not considered part of the act of
60 the General Assembly. Section 30-149 gives the Code Commission some discretion in making certain
61 minor changes to the Code of Virginia, including changes to section catchlines.

62 After further discussion, Mr. Moncure moved that (i) "resisting arrest" be deleted from the catchline of §
63 18.2-479.1 and (ii) those words be added to the catchline of § 18.2-460 after "justice." The motion was
64 seconded by Delegate Habeeb and approved, with Mr. Miller and Senator McDougle voting against the
65 motion. A letter will be drafted advising Delegate Albo that (a) the catchlines will be changed, (b) the
66 consensus of the Commission is that the section text of § 18.2-479.1 needs to be reviewed and rewritten,
67 and (c) the House Courts of Justice Committee might consider referring the section to the Crime
68 Commission for further review and recommendation.

69 **Issues pertaining to the Code of Virginia on the law portal:** Mark Vucci reviewed the Code
70 Commission's authority in § 30-146, which charges the Commission with publishing and maintaining
71 the Code of Virginia. Section 30-34.10:1 requires the Division of Legislative Automated Systems
72 (DLAS) to establish and maintain a legislative electronic information system, and § 30-34.10:2 provides
73 that the text of the Code of Virginia shall be a part of the system subject to conditions and restrictions
74 established by the Virginia Code Commission. DLAS makes the Code of Virginia available online
75 through the Virginia Law Portal.

76 Mr. Vucci expressed his concerns with the law portal, including the search and live chat features. Mr.
77 Vucci stated that the targeted audience is the general public but that the law portal should be developed
78 to be more useful to attorneys. He stressed that the Google search should be replaced with a Boolean
79 search or something comparable. Mr. Vucci wants to work with DLAS to improve the law portal. Ms.
80 Hausenfluck provided background on the development of the law portal and the DLAS goal of creating

81 a more public-friendly version. Although the law portal has many strong suits, one weakness is that the
82 portal was developed without involving the Division of Legislative Services.

83 The chair recognized Jeff Palmore, representing the Virginia Bar Association. Mr. Palmore stated that
84 the law portal is a citizen's primary resource for researching Virginia law. Mr. Palmore asked the
85 Commission to keep in mind, while it is seeking ways to improve the law portal's usability for attorneys,
86 that the law portal is a citizen resource and that attorneys have other resources at their disposal.

87 After discussion, Mr. Vucci indicated that he would meet with Preston Warren, Interim Director of
88 DLAS, and discuss his concerns.

89 **Bills referred to the Code Commission from the 2017 legislative session:** The Senate Courts of
90 Justice Committee referred Senate Bill 782 (Ebbin) and Senate Bill 832 (DeSteph) and the Senate
91 Privileges and Elections Committee referred Senate Joint Resolution 216 (Ebbin) to the Commission for
92 study.

93 Senator Edwards stated that SB 782 repeals §§ 20-45.2 and 20-45.3, the statutory prohibitions on same-
94 sex marriages and civil unions, as the statutes are no longer valid due to the United States Supreme
95 Court decision in *Obergefell v. Hodges*. The Commission discussed whether to recommend to the
96 General Assembly repeal of these sections as part of an obsolete laws bill. Mr. Moncure indicated that in
97 his tenure on the Commission, the Commission had never recommended a statute for repeal as obsolete
98 on the basis of a court decision. Delegate Habeeb stated that in light of Mr. Moncure's statement, §§ 20-
99 45.2 and 20-45.3 should not be added to the obsolete laws project.

100 Senator McDougle asked for information on how the General Assembly has acted in other
101 circumstances where Virginia law or the Virginia Constitution has been deemed invalid due to a
102 Supreme Court of Virginia or a United States Supreme Court decision and what the Commission's role
103 has been. He asked if there was a difference based on a Supreme Court of Virginia decision versus a
104 United States Supreme Court decision, and whether the invalid provision is in the Code or the
105 Constitution. Finally, he inquired as to whether the Code Commission's authority to recommend repeal
106 of obsolete laws applies in these situations.

107 Mr. Calhoun moved, seconded by Mr. Moncure, that the Commission take no action on the Senate
108 Courts of Justice Committee's request and referral for study regarding Senate Bill 782. Senator
109 McDougle stated that he opposed the motion on the basis of his request for historical information.

110 Mr. Calhoun withdrew his motion and offered another motion to defer action on the Committee's request
111 pending receipt of the historical information requested by Senator McDougle. The motion was seconded
112 and passed.

113 Senate Joint Resolution 216 proposed the repeal of the constitutional amendment dealing with marriage
114 that was approved by referendum in November 2006, because the provisions are no longer valid due to
115 *Obergefell v. Hodges*. By consensus, the Commission agreed to defer action pending receipt of the
116 historical information as previously voted on.

117 Senate Bill 832 amends § 54.1-4201.1 by replacing the Latin term "mutatis mutandis" with an English
118 translation. Mr. Vucci advised that the term "mutatis mutandis" is used over 100 times in the Code of
119 Virginia and that changing the term in only one section of the Code could set up interpretation problems
120 and cause confusion. As part of the discussion, it was noted that the translation of "mutatis mutandis" in
121 Senate Bill 832 was not a proper translation.

122 By consensus, the Commission decided to send a letter to the Senate Courts of Justice Committee
123 advising that the Commission has declined to recommend legislation to translate the term "mutatis
124 mutandis" into English, but noting that if the Senate Courts of Justice Committee believes that it should
125 be done, the term should be defined in Title 1 so that it applies to the entire Code of Virginia, and that
126 the definition should be properly translated.

127 **Status of 2017 legislation recommended by the Commission and other legislation affecting**
128 **Commission duties:** Jane Chaffin stated that all of the bills recommended by the Commission for the
129 2017 Session of the General Assembly had passed: House Bill 1538 (corrections to revision and
130 recodification of Title 23), Senate Bill 1272 (codification of the Nonresident Violator Compact of 1977),
131 Senate Bill 912 (reorganization of additions, subtractions, and deductions for Virginia residents taxable
132 income), Senate Bill 916 (guidance documents), and Senate Bill 1270 (obsolete law regarding the Ohio
133 River Basin Commission).

134 Delegate Habeeb addressed House Bill 1653 regarding changes to the Commission's codification
135 authority, which he introduced in the 2017 session. The bill passed unanimously in the House, and a
136 scheduling conflict prevented the Senate Rules Committee from taking up the bill. He stated that the
137 issue still needs to be addressed in Commission policy or statute.

138 **Follow-up related to codification authority discussion: new and updated web pages:** Jane Chaffin
139 advised that in response to the Commission's request, a new page titled "Editing Responsibilities in
140 Publishing the Code of Virginia" has been added to the Commission's website to explain the
141 Commission's codification practices. In addition, the Frequently Asked Questions page has been
142 updated. Copies of each page are included in the meeting materials.

143 **Other business:** Mr. Miller asked when the work plan would be presented to the Commission. Ms.
144 Chaffin stated that the work plan is expected to be placed on the May meeting agenda .

145 **Public comment; adjournment:** Senator Edwards opened the floor for public comment. As there was
146 no public comment and no further business to discuss, the meeting was adjourned at 11:40 a.m.

147 The next meeting is May 15, 2017, at 10 a.m. in House Room 1 of the State Capitol.