

VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 452

An Act to amend and reenact §§ 16.1-69.9, 16.1-69.9:1, 16.1-69.9:4, 17.1-303, 17.1-400, 17.1-501, 17.1-509, 17.1-512 and 19.2-35 of the Code of Virginia, relating to criminal history records search; justices; judges and substitute judges; magistrates.

[H 916]

Approved April 12, 2004

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.9, 16.1-69.9:1, 16.1-69.9:4, 17.1-303, 17.1-400, 17.1-501, 17.1-509, 17.1-512 and 19.2-35 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-69.9. Judges in office continued; terms of judges; how elected or appointed.

Every judge or justice and every associate, assistant and substitute judge or justice of a court not of record in office January 1, 1973, shall continue in office as a judge or substitute judge of such court under its designation as a general district court or juvenile and domestic relations district court until the expiration of the term for which he was appointed or elected, or until a vacancy shall occur in his office or until a successor shall be appointed or elected, whichever is the latter.

Upon the expiration of such terms, or when a vacancy occurs, successors shall be elected only as authorized pursuant to §§ 16.1-69.10 and 16.1-69.14 and for the term and in the manner following:

(a), (a1) [Repealed.]

(b) With respect to terms expiring on or after July 1, 1980, successors to judges shall be elected for a term of six years by the General Assembly as provided in (c) hereof.

Any vacancy in the office of any full-time district court judge shall be filled for a full term of six years in the manner prescribed herein; provided that such vacancy shall not be filled except as provided in § 16.1-69.9:3.

(c) Full-time district court judges shall be elected by the majority of the members elected to each house of the General Assembly. *No person shall be elected or reelected to a subsequent term under this section until he has submitted to a criminal history record search and a report of such search has been received by the chairmen of the House and Senate Committees for Courts of Justice.* The judges of the circuit court having jurisdiction over the district shall may nominate a panel of no more than three persons for each judgeship within the district who are deemed qualified to hold the office. The General Assembly may consider such nominations in electing a judge to fill the office but may elect a person not on such panel to fill the office. Nominations shall be forwarded to the clerks of both houses of the General Assembly on or before December 15.

(d) *No person with a criminal conviction for a felony shall be appointed as a substitute judge.*

If an appointment is to be made by two or more judges and there is a tie vote, then the senior judge of the circuit court having jurisdiction in the district shall make the appointment.

§ 16.1-69.9:1. Appointment, terms, etc., of substitute judges.

(a) Substitute judges shall be appointed by the chief judge of the circuit court having jurisdiction within the district for a term of six years.

(b) [Repealed.]

(c) Each substitute judge shall be appointed to serve every general district court and every juvenile and domestic relations district court within the judicial district for which the appointment is made.

(d) *No person shall be appointed under this section until he has submitted his fingerprints to be used for the conduct of a national criminal records search and a Virginia criminal history records search. No person with a criminal conviction for a felony shall be appointed as a substitute judge.*

§ 16.1-69.9:4. Same; election of successor judges.

Whenever a vacancy occurs or exists in the office of a full-time district judge while the General Assembly is in session, or whenever the term of a full-time judge of a district court will expire or the office will be vacated at a date certain between the adjournment of the General Assembly and the commencement of the next session of the General Assembly, a successor judge may be elected at any time during a session preceding the date of such vacancy, by the vote of a majority of the members elected to each house of the General Assembly, for a full term of six years and, upon qualification, the successor judge shall enter at once upon the discharge of the duties of his office. However, such successor judge shall not enter upon the discharge of his duties prior to the commencement of his term of office. *No person shall be elected or reelected to a subsequent term under this section until he has submitted to a criminal history record search and a report of such search has been received by the chairmen of the House and Senate Committees for Courts of Justice.*

§ 17.1-303. Election of successor justice before date of vacancy.

Whenever a vacancy occurs or exists in the office of a justice of the Supreme Court while the

General Assembly is in session, or whenever the term of office of a justice of the Supreme Court will expire or the office will be vacated at a date certain between the adjournment of the General Assembly and the commencement of the next session of the General Assembly, a successor may be elected at any time during a session preceding the date of such vacancy, by the vote of a majority of the members elected to each house of the General Assembly, for a full term and, upon qualification, the successor shall enter at once upon the discharge of the duties of the office; however, such successor shall not qualify prior to the predecessor leaving office. *No person shall be elected or reelected to a subsequent term under this section until he has submitted to a criminal history record search and a report of such search has been received by the chairmen of the House and Senate Committees for Courts of Justice.*

§ 17.1-400. Creation and organization; election and terms of judges; oath; vacancies; qualifications; incompatible activities prohibited; chief judge.

A. The Court of Appeals of Virginia is hereby established effective January 1, 1985. It shall consist of ~~eleven~~ 11 judges who shall be elected for terms of eight years by the majority of the members elected to each house of the General Assembly. Before entering upon the duties of the office, a judge of the Court of Appeals shall take the oath of office required by law. The oath shall be taken before a justice of the Supreme Court of Virginia or before any officer authorized by law to administer an oath. When any vacancy exists while the General Assembly is not in session, the Governor may appoint a successor to serve until ~~thirty~~ 30 days after the commencement of the next regular session of the General Assembly. Whenever a vacancy occurs or exists in the office of a judge of the Court of Appeals while the General Assembly is in session, or when the term of office of a judge of the Court of Appeals will expire or the office will be vacated at a date certain between the adjournment of the General Assembly and the commencement of the next session of the General Assembly, a successor may be elected at any time during a session preceding the date of such vacancy by the vote of a majority of the members elected to each house of the General Assembly for a full term and, upon qualification, the successor shall enter at once upon the discharge of the duties of the office; however, such successor shall not qualify prior to the predecessor leaving office. *No person shall be elected or reelected to a subsequent term under this section until he has submitted to a criminal history record search and a report of such search has been received by the chairmen of the House and Senate Committees for Courts of Justice.*

All judges of the Court of Appeals shall be residents of the Commonwealth and shall, at least five years prior to the appointment or election, have been licensed to practice law in the Commonwealth. No judge of the Court of Appeals, during his continuance in office, shall engage in the practice of law within or without the Commonwealth or seek or accept any nonjudicial elective office, or hold any other office of public trust, or engage in any other incompatible activity.

B. The chief judge shall be elected by majority vote of the judges of the Court of Appeals to serve a term of four years.

C. If a judge of the Court of Appeals is absent or unable through sickness, disability, or any other reason to perform or discharge any official duty or function authorized or required by law, a (i) retired chief justice or retired justice of the Supreme Court of Virginia, (ii) retired chief judge or retired judge of the Court of Appeals of Virginia, or (iii) retired judge of a circuit court of Virginia, with his or her prior consent, may be appointed by the chief judge of the Court of Appeals, acting upon his own initiative or upon a personal request from the absent or disabled judge, to perform or discharge the official duties or functions of the absent or disabled judge until that judge shall again be able to attend his duties. The chief judge of the Court of Appeals shall be notified forthwith at the time any absent or disabled judge is able to return to his duties.

D. The chief judge of the Court of Appeals may, upon his own initiative, designate a (i) retired chief justice or retired justice of the Supreme Court of Virginia, (ii) retired chief judge or retired judge of the Court of Appeals of Virginia, or (iii) retired or active judge of a circuit court of Virginia, with the prior consent of such justice or judge, to perform or discharge the official duties or functions of a judge of the Court of Appeals if there is a need to do so due to congestion in the work of the court. Nothing in this subsection shall be construed to increase the number of judges of the Court of Appeals provided for in subsection A of this section.

E. Any retired chief justice, retired justice, retired chief judge or active or retired judge sitting on the Court of Appeals pursuant to subsection C or D shall receive from the state treasury actual expenses for the time he or she is actually engaged in holding court.

F. The powers and duties herein conferred or empowered upon the chief judge of the Court of Appeals may be exercised and performed by any judge or any committee of judges of the court designated by the chief judge for such purpose.

§ 17.1-501. Judges of circuit courts; selection, powers and duties of chief judges; exercise of appointive powers.

A. There shall be as many judges of the circuit courts as may be fixed by the General Assembly. The judges of each circuit shall select from their number by majority vote a chief judge of the circuit, who shall serve for the term of two years. In the event such judges cannot agree as to who shall be chief judge, the Chief Justice of the Supreme Court shall act as tie breaker.

B. The chief judge of the circuit shall ensure that the system of justice in his circuit operates smoothly and efficiently. He shall have authority to assign the work of the circuit among the judges, and in doing so he may consider the nature and categories of the cases to be assigned.

C. Unless otherwise provided by law, powers of appointment within a circuit shall be exercised by a majority of the judges of the circuit. In case of a tie, the Chief Justice of the Supreme Court shall appoint a circuit judge from another circuit who shall act as tie breaker. Where the power of appointment is to be exercised by a majority of the judges of the Second Judicial Circuit and such appointment is to a local post, board or commission in Accomack or Northampton County, the resident judge or judges of the County of Accomack or Northampton shall exercise such appointment power as if he or they comprise the majority of the judges of the circuit.

D. No person shall be appointed or reappointed under this section until he has submitted his fingerprints to be used for the conduct of a national criminal records search and a Virginia criminal history records search. No person with a criminal conviction for a felony shall be appointed as a judge.

§ 17.1-509. Vacancies in office of judge.

Whenever a vacancy occurs in the office of judge, a successor, who shall be a resident of the same circuit, shall be elected for a full term of eight years and upon qualification shall enter at once upon the discharge of the duties of his office. ~~But, No person shall be elected or reelected to a subsequent term under this section until he has submitted to a criminal history record search and a report of such search has been received by the chairmen of the House and Senate Committees for Courts of Justice.~~ Subject to the provisions of §§ 17.1-511 and 17.1-512, the Governor shall have the power while the General Assembly is not in session to fill pro tempore vacancies in such office. Such appointment to every vacancy shall be by commission to expire at the end of ~~thirty~~ 30 days after the commencement of the next regular session of the General Assembly. *No person with a criminal conviction for a felony shall be appointed as a judge.*

§ 17.1-512. Election of successor judge before date of vacancy.

Whenever a vacancy occurs or exists in the office of a judge of a circuit while the General Assembly is in session, or whenever the term of office of a judge of a circuit court will expire or the office will be vacated at a date certain between the adjournment of the General Assembly and the commencement of the next session of the General Assembly, a successor judge may be elected at any time during a session preceding the date of such vacancy, by the vote of a majority of the members elected to each house of the General Assembly, for a term of eight years and upon qualification, the successor judge shall enter at once upon the discharge of the duties of his office. However, such successor judge shall not enter upon the discharge of his duties prior to the commencement of his term of office. *No person shall be elected or reelected to a subsequent term under this section until he has submitted to a criminal history record search and a report of such search has been received by the chairmen of the House and Senate Committees for Courts of Justice. No person with a criminal conviction for a felony shall be appointed as a judge.*

§ 19.2-35. Appointment; supervision generally.

Magistrates and any other personnel in the office of the magistrate shall be appointed by the chief judge of the circuit court having jurisdiction within the district. Each magistrate shall be appointed to serve the entire judicial district for which the appointment is made. The chief circuit judge shall have full supervisory authority over the magistrates so appointed, but may delegate this authority to the chief general district judge. Notwithstanding any other provision of law, the only methods for the selection of magistrates shall be as set out in this section.

The chief judge may also appoint so many substitute magistrates as may be authorized by the Committee on District Courts. The order of appointment of such substitute magistrate shall specify the period such substitute magistrate shall serve and during this period such substitute magistrate shall exercise all the powers enumerated in § 19.2-45 in the judicial district for which the appointment is made.

If a magistrate of any district is absent or unable through sickness or other disability to perform his duties, the chief magistrate of that district may call upon any off-duty magistrate of an adjoining district to serve in a replacement capacity. When so designated, the replacement magistrate shall have all the authority and power of a magistrate of that district.

No person shall be appointed under this section until he has submitted his fingerprints to be used for the conduct of a national criminal records search and a Virginia criminal history records search. No person with a criminal conviction for a felony shall be appointed as a magistrate.