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SENATE BILL NO. 335

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 8.01-293, 16.1-264 and 17.1-272 of the Code of Virginia, relating to service of process on teacher or other school personnel; restrictions; fees.

Patron—Stolle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-293, 16.1-264 and 17.1-272 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-293. Authorization to serve process, capias or criminal show cause order; execute writ of possession and levy upon property.

A. The following persons are authorized to serve process:

1. The sheriff within such territorial bounds as described in § 8.01-295; or

2. Any person of age ~~eighteen~~ 18 years or older and who is not a party or otherwise interested in the subject matter in controversy. *However, in any case in which custody or visitation of a minor child or children is at issue and a summons is issued for the attendance and testimony of a teacher or other school personnel who is not a party to the proceeding, such summons shall be served only by a sheriff, his deputy, or a police officer.*

Whenever in this Code the term "officer" or "sheriff" is used to refer to persons authorized to make, return or do any other act relating to service of process, such term shall be deemed to refer to any person authorized by this section to serve process.

B. Notwithstanding any other provision of law (i) only a sheriff or high constable may execute an order or writ of possession for personal, real or mixed property, including an order or writ of possession arising out of an action in unlawful entry and detainer or ejectment; (ii) any sheriff, high constable or law-enforcement officer as defined in § 9.1-101 of the Code of Virginia may serve any capias or criminal show cause order; and (iii) only a sheriff, the high constable for the City of Norfolk or Virginia Beach or a treasurer may levy upon property.

§ 16.1-264. Service of summons; proof of service; penalty.

A. If a party designated in § 16.1-263 A to be served with a summons can be found within the Commonwealth, the summons shall be served upon him in person or by substituted service as prescribed in § 8.01-296 (2).

If a party designated to be served in § 16.1-263 is without the Commonwealth but can be found or his address is known, or can with reasonable diligence be ascertained, service of summons may be made either by delivering a copy thereof to him personally or by mailing a copy thereof to him by certified mail return receipt requested.

If after reasonable effort a party other than the person who is the subject of the petition cannot be found or his post-office address cannot be ascertained, whether he is within or without the Commonwealth, the court may order service of the summons upon him by publication in accordance with the provisions of §§ 8.01-316 and 8.01-317.

B. Service of summons may be made under the direction of the court by sheriffs, their deputies and police officers in counties and cities or by any other suitable person designated by the court. *However, in any case in which custody or visitation of a minor child or children is at issue and a summons is issued for the attendance and testimony of a teacher or other school personnel who is not a party to the proceeding, such summons shall be served only by a sheriff, his deputy, or a police officer.*

C. Proof of service may be made by the affidavit of the person other than an officer designated in subsection B hereof who delivers a copy of the summons to the person summoned, but if served by a state, county or municipal officer his return shall be sufficient without oath.

D. The summons shall be considered a mandate of the court and willful failure to obey its requirements shall subject any person guilty thereof to liability for punishment as for contempt.

§ 17.1-272. Process and service fees generally.

A.1. The fee for process and service in the following instances shall be ~~twelve dollars~~ \$12:

1. Service on any person, firm or corporation, a declaration in ejectment, order, notice, summons or any other civil process, except as herein otherwise provided, and for service on any person, firm, or corporation any process when the body is not taken and making a return thereof, except that no fee shall be charged for service pursuant to § 2.2-4022.

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- 59 2. Summoning a witness, *except as provided in subsection A2*, or garnishee on an attachment.
60 3. Service on any person of an attachment or other process under which the body is taken and
61 making a return thereon.
62 4. Service of any order of court not otherwise provided for, except that no fees shall be charged for
63 protective orders issued pursuant to Chapter 11 (§ 16.1-226 et seq.) of Title 16.1.
64 5. Service of a writ of possession.
65 6. Levying an execution or distress warrant or an attachment.
66 7. Making a return of a writ of fieri facias where no levy is made or forthcoming bond is taken.
67 8. Levying upon current money, bank notes, goods or chattels of a judgment debtor pursuant to
68 § 8.01-478.
69 A.2. *The fee for process and service in any case in which custody or visitation of a minor child or*
70 *children is at issue shall be \$24.*
71 B. The process and service fee for serving any papers returnable out of state shall be ~~fifty dollars~~\$50,
72 except no fees shall be charged for the service of papers in connection with the prosecution of any
73 misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration,
74 or service of a protection order or a petition for protection order, to protect a victim of domestic
75 violence, stalking or sexual assault. A victim of domestic violence, stalking or sexual assault shall not
76 bear the costs associated with the filing of criminal charges against the offender, or the costs associated
77 with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection
78 order, or witness subpoena, issued inside or outside the Commonwealth.
79 C. The fees set out in this section shall be allowable for services provided by such officers in the
80 circuit and district courts.