081725866

**HOUSE BILL NO. 903**

House Amendments in [ ] - February 11, 2008

*A BILL to amend and reenact §§ 3.1-383, 3.1-796.93:1, 3.1-796.116, 3.1-796.126:10, 8.01-126, 8.01-537, 8.01-540, 15.2-1704, 15.2-1710, 16.1-135, 19.2-5, 19.2-34 through 19.2-39, 19.2-43, 19.2-44, 19.2-45, 19.2-46, 19.2-46.1, 19.2-48, 19.2-48.1, 19.2-77, 19.2-81.3, 19.2-119, 19.2-152.4:3, 20-70, 20-84, 27-32, 27-32.1, 27-32.2, 27-37.1, 37.2-808, 37.2-809, 37.2-1103, 37.2-1104, 43-29, 46.2-104, 49-6, 55-205, 55-230, 59.1-98, and 59.1-106 of the Code of Virginia and to repeal §§ 19.2-30 and 19.2-41 of the Code of Virginia, relating to magistrates.*

Patron Prior to Engrossment—Delegate Putney

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 3.1-383, 3.1-796.93:1, 3.1-796.116, 3.1-796.126:10, 8.01-126, 8.01-537, 8.01-540, 15.2-1704, 15.2-1710, 16.1-135, 19.2-5, 19.2-34 through 19.2-39, 19.2-43, 19.2-44, 19.2-45, 19.2-46, 19.2-46.1, 19.2-48, 19.2-48.1, 19.2-77, 19.2-81.3, 19.2-119, 19.2-152.4:3, 20-70, 20-84, 27-32, 27-32.1, 27-32.2, 27-37.1, 37.2-808, 37.2-809, 37.2-1103, 37.2-1104, 43-29, 46.2-104, 49-6, 55-205, 55-230, 59.1-98, and 59.1-106 of the Code of Virginia are amended and reenacted as follows:**

§ 3.1-383. Food forbidden to be sold; seizure; prosecution and punishment; inspection.

It shall be unlawful for any person to sell or to offer or expose for sale for human food any article which has been prepared, handled or kept where the sanitary conditions are such that the article is rendered unhealthy, unwholesome, deleterious, or otherwise unfit for human food, or which consists in whole or in part of diseased, filthy, decomposed or putrid animal or vegetable matter.

The Commissioner, his agents or assistants, and all peace and health officers shall have the power and are required to seize any and all articles which are offered or exposed for sale for human food, which have been prepared, handled or kept where the sanitary conditions are such that the article is rendered unhealthy, unwholesome, deleterious or otherwise unfit for human food, or which consist in whole or in part of diseased, filthy, decomposed or putrid animal or vegetable matter; and shall ~~deliver~~ *present* the same forthwith ~~to~~ ~~and~~ before ~~the~~ ~~nearest~~ *a* magistrate, or other officer authorized to issue such warrants, together with all information obtained, and the magistrate or other officer shall, upon sworn complaint being filed, issue a warrant, for the arrest of any person charged in any such complaint with a violation of the provisions of this section, returnable before the general district court, which shall proceed to try the case. Any person who shall violate any of the provisions of this section, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $10 nor more than $100, and the article or articles of food in question shall be destroyed.

The Commissioner, his agents or assistants, and all peace and health officers in the execution of the provisions of this section, shall have full right to enter and inspect all places in which any articles of human food are stored, offered or exposed for sale; and any person who shall hinder or obstruct any of the officers in the discharge of the authority or duty imposed by the provisions of this section shall be guilty of a violation of the same.

§ 3.1-796.93:1. Control of dangerous or vicious dogs; penalties.

A. As used in this section:

"Dangerous dog" means a canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person or companion animal that is a dog or cat, or killed a companion animal that is a dog or cat. However, when a dog attacks or bites a companion animal that is a dog or cat, the attacking or biting dog shall not be deemed dangerous (i) if no serious physical injury as determined by a licensed veterinarian has occurred to the dog or cat as a result of the attack or bite, (ii) if both animals are owned by the same person, (iii) if such attack occurs on the property of the attacking or biting dog's owner or custodian, or (iv) for other good cause as determined by the court. No dog shall be found to be a dangerous dog as a result of biting, attacking, or inflicting injury on a dog or cat while engaged with an owner or custodian as part of lawful hunting or participating in an organized, lawful dog handling event.

"Vicious dog" means a canine or canine crossbreed that has (i) killed a person; (ii) inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of health, or serious impairment of a bodily function; or (iii) continued to exhibit the behavior that resulted in a previous finding by a court or, on or before July 1, 2006, by an animal control officer as authorized by local ordinance, that it is a dangerous dog, provided that its owner has been given notice of that finding.

B. Any law-enforcement officer or animal control officer who has reason to believe that a canine or

canine crossbreed within his jurisdiction is a dangerous dog or vicious dog shall apply to a magistrate ~~of~~ *serving* the jurisdiction for the issuance of a summons requiring the owner or custodian, if known, to appear before a general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matters at issue. If a law-enforcement officer successfully makes an application for the issuance of a summons, he shall contact the local animal control officer and inform him of the location of the dog and the relevant facts pertaining to his belief that the dog is dangerous or vicious. The animal control officer shall confine the animal until such time as evidence shall be heard and a verdict rendered. If the animal control officer determines that the owner or custodian can confine the animal in a manner that protects the public safety, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian or harborer of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is a dangerous dog, the court shall order the animal's owner to comply with the provisions of this section. If, after hearing the evidence, the court finds that the animal is a vicious dog, the court shall order the animal euthanized in accordance with the provisions of § 3.1-796.119. The procedure for appeal and trial shall be the same as provided by law for misdemeanors. Trial by jury shall be as provided in Article 4 (§ 19.2-260 et seq.) of Chapter 15 of Title 19.2. The Commonwealth shall be required to prove its case beyond a reasonable doubt.

C. No canine or canine crossbreed shall be found to be a dangerous dog or vicious dog solely because it is a particular breed, nor is the ownership of a particular breed of canine or canine crossbreed prohibited. No animal shall be found to be a dangerous dog or vicious dog if the threat, injury or damage was sustained by a person who was (i) committing, at the time, a crime upon the premises occupied by the animal's owner or custodian, (ii) committing, at the time, a willful trespass upon the premises occupied by the animal's owner or custodian, or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times. No police dog that was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous dog or a vicious dog. No animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, shall be found to be a dangerous dog or a vicious dog.

D. If the owner of an animal found to be a dangerous dog is a minor, the custodial parent or legal guardian shall be responsible for complying with all requirements of this section.

E. The owner of any animal found to be a dangerous dog shall, within 10 days of such finding, obtain a dangerous dog registration certificate from the local animal control officer or treasurer for a fee of $50, in addition to other fees that may be authorized by law. The local animal control officer or treasurer shall also provide the owner with a uniformly designed tag that identifies the animal as a dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and tag at all times. All certificates obtained pursuant to this subsection shall be renewed annually for the same fee and in the same manner as the initial certificate was obtained. The animal control officer shall provide a copy of the dangerous dog registration certificate and verification of compliance to the State Veterinarian.

F. All dangerous dog registration certificates or renewals thereof required to be obtained under this section shall only be issued to persons 18 years of age or older who present satisfactory evidence (i) of the animal's current rabies vaccination, if applicable, (ii) that the animal has been neutered or spayed, and (iii) that the animal is and will be confined in a proper enclosure or is and will be confined inside the owner's residence or is and will be muzzled and confined in the owner's fenced-in yard until the proper enclosure is constructed. In addition, owners who apply for certificates or renewals thereof under this section shall not be issued a certificate or renewal thereof unless they present satisfactory evidence that (i) their residence is and will continue to be posted with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property and (ii) the animal has been permanently identified by means of a tattoo on the inside thigh or by electronic implantation. All certificates or renewals thereof required to be obtained under this section shall only be issued to persons who present satisfactory evidence that the owner has liability insurance coverage, to the value of at least $100,000, that covers animal bites. The owner may obtain and maintain a bond in surety, in lieu of liability insurance, to the value of at least $100,000.

G. While on the property of its owner, an animal found to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults, or other animals. The structure shall be designed to provide the animal with shelter from the elements of nature. When off its owner's property, an animal found to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it from biting a person or another animal.

H. The owner of any dog found to be dangerous shall register the animal with the Commonwealth of

Virginia Dangerous Dog Registry, as established under § 3.1-796.93:3, within 45 days of such a finding by a court of competent jurisdiction.

The owner shall also cause the local animal control officer to be promptly notified of (i) the names, addresses, and telephone numbers of all owners; (ii) all of the means necessary to locate the owner and the dog at any time; (iii) any complaints or incidents of attack by the dog upon any person or cat or dog; (iv) any claims made or lawsuits brought as a result of any attack; (v) tattoo or chip identification information or both; (vi) proof of insurance or surety bond; and (vii) the death of the dog.

I. After an animal has been found to be a dangerous dog, the animal's owner shall immediately, upon learning of same, cause the local animal control authority to be notified if the animal (i) is loose or unconfined; or (ii) bites a person or attacks another animal; or (iii) is sold, given away, or dies. Any owner of a dangerous dog who relocates to a new address shall, within 10 days of relocating, provide written notice to the appropriate local animal control authority for the old address from which the animal has moved and the new address to which the animal has been moved.

J. Any owner or custodian of a canine or canine crossbreed or other animal is guilty of a:

1. Class 2 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog pursuant to this section, when such declaration arose out of a separate and distinct incident, attacks and injures or kills a cat or dog that is a companion animal belonging to another person;

2. Class 1 misdemeanor if the canine or canine crossbreed previously declared a dangerous dog pursuant to this section, when such declaration arose out of a separate and distinct incident, bites a human being or attacks a human being causing bodily injury; or

3. Class 6 felony if any owner or custodian whose willful act or omission in the care, control, or containment of a canine, canine crossbreed, or other animal is so gross, wanton, and culpable as to show a reckless disregard for human life, and is the proximate cause of such dog or other animal attacking and causing serious bodily injury to any person.

The provisions of this subsection shall not apply to any animal that, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, a person, or its owner's or custodian's property, or when the animal is a police dog that is engaged in the performance of its duties at the time of the attack.

K. The owner of any animal that has been found to be a dangerous dog who willfully fails to comply with the requirements of this section is guilty of a Class 1 misdemeanor.

L. All fees collected pursuant to this section, less the costs incurred by the animal control authority in producing and distributing the certificates and tags required by this section, shall be paid into a special dedicated fund in the treasury of the locality for the purpose of paying the expenses of any training course required under § 3.1-796.104:1.

M. The governing body of any locality may enact an ordinance parallel to this statute regulating dangerous and vicious dogs; provided, however, that no locality may impose a felony penalty for violation of such local ordinances.

§ 3.1-796.116. Dogs killing, injuring or chasing livestock or poultry.

It shall be the duty of any animal control officer or other officer who may find a dog in the act of killing or injuring livestock or poultry to kill such dog forthwith whether such dog bears a tag or not. Any person finding a dog committing any of the depredations mentioned in this section shall have the right to kill such dog on sight as shall any owner of livestock or his agent finding a dog chasing livestock on land utilized by the livestock when the circumstances show that such chasing is harmful to the livestock. Any court shall have the power to order the animal control officer or other officer to kill any dog known to be a confirmed livestock or poultry killer, and any dog killing poultry for the third time shall be considered a confirmed poultry killer. The court, through its contempt powers, may compel the owner, custodian, or harborer of the dog to produce the dog.

Any animal control officer who has reason to believe that any dog is killing livestock or poultry shall be empowered to seize such dog solely for the purpose of examining such dog in order to determine whether it committed any of the depredations mentioned herein. Any animal control officer or other person who has reason to believe that any dog is killing livestock, or committing any of the depredations mentioned in this section, shall apply to a magistrate ~~of~~ *serving* the county, city or town wherein such dog may be, who shall issue a warrant requiring the owner or custodian, if known, to appear before a general district court at a time and place named therein, at which time evidence shall be heard. If it shall appear that the dog is a livestock killer, or has committed any of the depredations mentioned in this section, the district court shall order that the dog be (i) killed immediately by the animal control officer or other officer designated by the court or (ii) removed to another state which does not border on the Commonwealth and prohibited from returning to the Commonwealth. Any dog ordered removed from the Commonwealth which is later found in the Commonwealth shall be ordered by a court to be killed immediately.

§ 3.1-796.126:10. Hybrid canines killing, injuring or chasing livestock.

It shall be the duty of any animal control officer or other officer who may find a hybrid canine in the act of killing or injuring livestock or poultry to kill such hybrid canine forthwith, whether such hybrid canine bears a tag or not. Any person finding a hybrid canine committing any of the depredations mentioned in this section shall have the right to kill such hybrid canine on sight as shall any owner of livestock or his agent finding a hybrid canine chasing livestock on land lawfully utilized by the livestock when the circumstances show that such chasing is harmful to the livestock. Any court shall have the power to order the animal control officer or other officer to kill any hybrid canine known to be a confirmed livestock or poultry killer, and any hybrid canine killing poultry for the third time shall be considered a confirmed poultry killer. The court, through its contempt powers, may compel the owner, custodian, or harborer of the hybrid canine to produce the hybrid canine.

Any animal control officer who has reason to believe that any hybrid canine is killing livestock or poultry shall be empowered to seize such hybrid canine solely for the purpose of examining such hybrid canine in order to determine whether it committed any of the depredations mentioned herein. Any animal control officer or other person who has reason to believe that any hybrid canine is killing livestock, or committing any of the depredations mentioned in this section, shall apply to a magistrate ~~for~~ *serving* the county, city or town wherein such hybrid canine may be, who shall issue a warrant requiring the owner or custodian, if known, to appear before a general district court at a time and place named therein, at which time evidence shall be heard. If it appears that the hybrid canine is a livestock killer, or has committed any of the depredations mentioned in this section, the district court shall order that the hybrid canine be (i) killed immediately by the animal control officer or other officer designated by the court or (ii) removed to another state which does not border on the Commonwealth and prohibited from returning to the Commonwealth. Any hybrid canine ordered removed from the Commonwealth which is later found in the Commonwealth shall be ordered by a court to be killed immediately.

§ 8.01-126. Summons for unlawful detainer issued by magistrate or clerk or judge of a general district court.

In any case when possession of any house, land or tenement is unlawfully detained by the person in possession thereof, the landlord, his agent, attorney, or other person, entitled to the possession may present to a magistrate~~,~~ *or a* clerk or judge of a general district court a statement under oath of the facts which authorize the removal of the tenant or other person in possession, describing such premises; and thereupon such magistrate, clerk or judge ~~of a general district court~~ shall issue his summons against the person or persons named in such affidavit. The process issued upon any such summons issued by a magistrate, clerk or judge may be served as provided in §§ 8.01-293 and 8.01-296 or § 8.01-299. When issued by a magistrate it may be returned to and the case heard and determined by the judge of a general district court. If the summons for unlawful detainer is filed to terminate a tenancy pursuant to the Virginia Residential Landlord Tenant Act (§ 55-248.2 et seq.), the initial hearing on such summons shall occur as soon as practicable, but not more than twenty-one days from the date of filing. If the case cannot be heard within twenty-one days from the date of filing, the initial hearing shall be held as soon as practicable. If the plaintiff requests that the initial hearing be set on a date later than twenty-one days from the date of filing, the initial hearing shall be set on a date the plaintiff is available that is also available for the court. Such summons shall be served at least ten days before the return day thereof.

§ 8.01-537. Petition for attachment; costs, fees and taxes.

A. Every attachment shall be commenced by a petition filed before a judge~~, magistrate~~ or clerk of a circuit or general district court of, *or magistrate serving,* the county or city in which venue is given by subdivision 11 of § 8.01-261. If it is sought to recover specific personal property, the petition shall state (i) the kind, quantity, and estimated fair market value thereof, (ii) the character of estate therein claimed by the plaintiff, (iii) the plaintiff's claim with such certainty as will give the adverse party reasonable notice of the true nature of the claim and the particulars thereof and (iv) what sum, if any, the plaintiff claims he is entitled to recover for its detention. If it is sought to recover a debt or damages for a breach of contract, express or implied, or damages for a wrong, the petition shall set forth (i) the plaintiff's claim with such certainty as will give the adverse party reasonable notice of the true nature of the claim and the particulars thereof, (ii) a sum certain which, at the least, the plaintiff is entitled to, or ought to recover, and (iii) if based on a contract and if the claim is for a debt not then due and payable, at what time or times the same will become due and payable. The petition shall also allege the existence of one or more of the grounds mentioned in § 8.01-534, and shall set forth specific facts in support of the allegation. The petition shall ask for an attachment against the specific personal property mentioned in the petition, or against the estate, real and personal, of one or more of the principal defendants, or against the estate, real and personal, of one or more of the principal defendants, or against both the specific personal property and the estate of such defendants, real or personal. The petition shall state whether the officer is requested to take possession of the attached tangible personal property. The petition shall be sworn to by the plaintiff or his agent, or some other person cognizant of the facts therein stated.

B. The plaintiff praying for an attachment shall, at the time that he files his petition, pay to the clerk of the court to which the return is made the proper costs, fees and taxes, and in the event of his failure to do so, the attachment shall not be issued.

§ 8.01-540. Issuance of attachment; against what attachment to issue.

A judge ~~or magistrate~~ of, *or a magistrate serving,* the court in which a petition for attachment is filed shall make an ex parte review of the petition. The judge or magistrate shall issue an attachment in accordance with the prayer of the petition only upon a determination that (i) there is reasonable cause to believe that grounds for attachment may exist and (ii) the petition complies with §§ 8.01-534, 8.01-537 and 8.01-538. The judge or magistrate may receive evidence only in the form of a sworn petition which shall be filed in the office of the clerk of the court. If the plaintiff seeks the recovery of specific personal property, the attachment may be (i) against such property and against the principal defendant's estate for so much as is sufficient to satisfy the probable damages for its detention or (ii) at the option of the plaintiff, against the principal defendant's estate for the value of the specific property and the damages for its detention. If the plaintiff seeks to recover a debt or damages for the breach of a contract, express or implied, or damages for a wrong, the attachment shall be against the principal defendant's estate for the amount specified in the petition as that which the plaintiff at the least is entitled to or ought to recover.

If the attachment is issued by a magistrate, it shall be returnable as prescribed by § 8.01-541. The magistrate shall promptly return to the clerk's office of the court to which the attachment is returnable the petition and the bond, if any, filed before him. The proceedings thereafter shall be the same as if the attachment had been issued by a judge.

§ 15.2-1704. Powers and duties of police force.

A. The police force of a locality is hereby invested with all the power and authority which formerly belonged to the office of constable at common law and is responsible for the prevention and detection of crime, the apprehension of criminals, the safeguard of life and property, the preservation of peace and the enforcement of state and local laws, regulations, and ordinances.

B. A police officer has no authority in civil matters, except (i) to execute and serve temporary detention and emergency custody orders and any other powers granted to law-enforcement officers in § 37.2-808 or § 37.2-809, (ii) to serve an order of protection pursuant to §§ 16.1-253.1, 16.1-253.4 and 16.1-279.1, (iii) to execute all warrants or summons as may be placed in his hands by any magistrate ~~for~~ *serving* the locality and to make due return thereof, and (iv) to deliver, serve, execute, and enforce orders of isolation and quarantine issued pursuant to §§ 32.1-48.09, 32.1-48.012, and 32.1-48.014 and to deliver, serve, execute, and enforce an emergency custody order issued pursuant to § 32.1-48.02. A town police officer, after receiving training under subdivision 8 of § 9.1-102, may, with the concurrence of the local sheriff, also serve civil papers, and make return thereof, only when the town is the plaintiff and the defendant can be found within the corporate limits of the town.

§ 15.2-1710. Fees and other compensation.

A police officer shall not receive any fee or other compensation out of the state treasury or the treasury of a locality for any service rendered under the provisions of this chapter other than the salary paid him by the locality and a fee as a witness in cases arising under the criminal laws of the Commonwealth. A police officer shall not receive any fee as a witness in any case arising under the ordinances of his locality, nor for attendance as a witness before any magistrate ~~in~~ *serving* his locality. However, if it is necessary or expedient for him to travel beyond the limits of the locality in his capacity as a police officer, he shall be entitled to his actual expenses, as provided by law for other expenses in criminal cases.

Nothing in this section shall be construed as prohibiting a police officer of a locality from claiming and receiving any reward which may be offered for the arrest and detention of any offender against the criminal laws of this or any other state or nation.

§ 16.1-135. Bail and recognizance; papers filed with circuit court.

A person who has been convicted of an offense in a district court and who has noted an appeal, either at the time judgment is rendered or subsequent to its entry, shall be given credit for any bond that he may have posted in the court from which he appeals and shall be treated in accordance with the provisions of Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2. Any new bond which may be required for the release of such person pending the appeal shall be given before the judge or the clerk of the district court and treated in accordance with Article 1 of Chapter 9 of Title 19.2; however, if the judge or clerk is not available to take the bond, the bond may be given before a magistrate ~~of~~ *serving* the jurisdiction. Whenever an appeal is taken and the ten-day period prescribed by § 16.1-133 has expired the papers shall be promptly filed with the clerk of the circuit court.

§ 19.2-5. Meaning of certain terms.

As used in this title, unless otherwise clearly indicated by the context in which it appears:

"Court" means any court vested with appropriate jurisdiction under the Constitution and laws of the

Commonwealth.

"Judge" means any judge, associate judge or substitute judge~~, or magistrate,~~ of any court *or any magistrate*.

"Court not of record," and "district court" shall have the respective meanings assigned to them in Chapter 4.1 (§ 16.1-69.1 et seq.) of Title 16.1.

§ 19.2-34. Number of magistrates.

There shall be appointed ~~for each judicial district~~ as many magistrates as are necessary for the effective administration of justice~~, such magistrates and any other personnel in the office of the magistrates~~. *The positions of all employees of the magistrate system* shall be authorized by the Committee on District Courts established pursuant to § 16.1-69.33.

§ 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, in consultation with both the chief general district court judge and the chief juvenile and domestic relations district court judge of that district~~ *Executive Secretary of the Supreme Court of Virginia* [ *in consultation with the chief judges of the circuit courts having jurisdiction within the region* ] . Each magistrate shall be appointed to serve ~~the entire judicial district for which the appointment is made~~ *one or more of the magisterial regions created by the Executive Secretary. Each magisterial region shall be comprised of one or more judicial districts.* The ~~chief circuit court judge~~ *Executive Secretary* shall have full supervisory authority over the magistrates so appointed [ ~~, but may delegate this authority to the chief general district court judge as set forth in § 19.2-43~~ ] . Notwithstanding any other provision of law, the only methods for the selection of magistrates shall be as set out in this section.

~~The chief circuit court judge, in consultation with both the chief general district court judge and the chief juvenile and domestic relations district court judge of that district, 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.

§ 19.2-36. Chief magistrates.

*A.* The ~~chief judge of a circuit court, in consultation with both the chief general district court judge and the chief juvenile and domestic relations district court judge of that district,~~ *Executive Secretary of the Supreme Court of Virginia* may appoint ~~a~~ chief ~~magistrate~~ *magistrates*, for the purpose of ~~maintaining the proper schedules,~~ assisting in the training of the magistrates ~~within such judicial district~~ and ~~to be~~ *being* responsible to the ~~chief circuit court judge~~ *Executive Secretary* for the conduct of the magistrates and to further assist the ~~chief circuit court judge~~ *Office of the Executive Secretary* in the operation of ~~the magistrate system~~ *one or more of the magisterial regions*. The chief magistrate shall exercise direct daily supervision over the magistrates ~~within the district~~ *he supervises* and shall have the power to suspend without pay a magistrate after consultation and with the concurrence of the ~~chief circuit court judge~~ *Executive Secretary*.

*B. To be eligible for appointment as chief magistrate, a person shall meet all of the qualifications of a magistrate under § 19.2-37 and must be a member in good standing of the Virginia State Bar. His appointment as chief magistrate shall terminate effective on the date on which his membership in good standing ceases. The requirements of this subsection relating to membership in the Virginia State Bar shall not apply to any person appointed as a chief magistrate before July 1, 2008, who continues in that capacity without a break in service.*

§ 19.2-37. Magistrates; eligibility for appointment; restrictions on activities.

*A.* Any person *who is a United States citizen and resident of the Commonwealth* may be appointed to the office of magistrate under this title subject to the limitations of Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2 and of this section.

*B. Every person appointed as a magistrate on and after July 1, 2008, shall be required to have a bachelor's degree from an accredited institution of higher education. A person initially appointed as a magistrate prior to July 1, 2008, who continues in office without a break in service is not required to have a bachelor's degree from an accredited institution of higher education* [ ~~*on July 1, 2008. However, such magistrate shall be required to make satisfactory progress toward such degree beginning in the academic year following July 1, 2009, and shall be expected to obtain a bachelor's degree on or before*~~

*July 1, 2018, unless granted a waiver by the Executive Secretary* ] .

*C.* A person shall *not* be eligible for appointment to the office of *as a* magistrate under the provisions of this title: (a) if such person is not a law-enforcement officer; (b) if such person or his spouse is not a clerk, deputy or assistant clerk, or employee of any such clerk of a district *or circuit* court, provided that the Committee on District Courts may authorize a magistrate to assist in the district court clerk's office on a part-time basis; (c) if the appointment does not create a parent-child, husband-wife, or brother-sister relationship between a district court judge and such person serving within the same judicial district; (c1) *if the parent, child, spouse, or sibling of such person is a district or circuit court judge in the magisterial region where he will serve; or (d)* if such person is not the chief executive officer, or a member of the board of supervisors, town or city council, or other governing body for any political subdivision of this *the* Commonwealth; (d) if such person is a United States citizen and a resident of the judicial district for which he is appointed to serve as magistrate or an adjoining judicial district. Any magistrate serving in the City of Norfolk on July 1, 1996, shall be eligible for reappointment pursuant to this article regardless of the judicial district of his residence.

*D.* No magistrate shall issue any warrant or process in complaint of his spouse, child, grandchild, parent, grandparent, parent-in-law, child-in-law, brother, sister, brother-in-law or sister-in-law, nephew, niece, uncle, aunt, first cousin, guardian or ward. The residence provisions contained in this section shall not be a bar to the reappointment of any magistrate in office on July 1, 1973, provided he is otherwise eligible to serve under the provisions of this chapter.

*E. A magistrate may not engage in any other activity for financial gain during the hours that he is serving on duty as a magistrate. A magistrate may not be employed outside his duty hours without the prior written approval of the Executive Secretary.*

*F.* [ *A magistrate may not No person appointed as a magistrate on or after July 1, 2008, may* ] *engage in the practice of law.*

*G. A magistrate who is designated as a marriage celebrant under § 20-25 may not accept a fee, a gratuity, or any other thing of value for exercise of authority as a marriage celebrant.*

§ 19.2-38. Probationary period; compensation and benefits; vacancies; revocation of appointment.

Persons appointed as magistrates under the provisions of this chapter shall serve for a term of four years. Such term shall commence upon appointment and qualification, provided that any magistrate appointed for the first time to any term commencing after July 1, 1980, *at the pleasure of the Executive Secretary. Upon appointment by the Executive Secretary, every magistrate* shall serve initially for a six-month *nine-month* probationary period during which the magistrate must complete the minimum training program as established by the Committee on District Courts and satisfactorily complete a certification examination. Failure *Any magistrate who fails* to successfully pass the certification examination shall preclude the magistrate from serving *not serve* beyond the six-month *nine-month* probationary period. *The probationary period described in this section shall not apply to any magistrate serving on July 1, 2008, who has successfully completed the minimum training program and passed the certification examination, provided there is no break in service after July 1, 2008.* Magistrates shall be entitled to compensation and other benefits only from the time they take office. Appointments made under the provisions of this chapter shall be revocable at the pleasure of the chief circuit court judge.

§ 19.2-38.1. Training standards; training prerequisite to reappointment; waiver.

The Committee on District Courts shall establish minimum training *and certification* standards for magistrates in accordance with such rules and regulations as may be established by the Committee. Every magistrate appointed to an original term commencing on or after July 1, 1980, shall comply with the minimum training *these* standards established by the Committee on District Courts and such magistrates must *shall* complete the minimum training standards as a prerequisite for continuing to serve as magistrate beyond the six-month *nine-month* probationary period as established by § 19.2-38. All magistrates shall be required to complete the minimum training standards prior to reappointment for a new term. The Committee on District Courts upon request may waive any portion of the minimum training standards for an individual magistrate.

Every magistrate appointed to an original term commencing on or after July 1, 1985, shall be required to have a high school diploma or General Education Development Certificate.

Every magistrate appointed to an original term commencing on or after July 1, 1995, shall be required to have a bachelor's degree from an accredited institution of higher learning or equivalent experience.

§ 19.2-39. Bond.

Every magistrate appointed under the provisions of this chapter shall enter into bond in the sum of $5,000, made payable to the Commonwealth, before the *a* clerk of the *a* circuit court which exercises jurisdiction over the political subdivision wherein such magistrate shall serve, for the faithful performance of his duties. The premium for such bond shall be paid by the Commonwealth. Provided, however, that in lieu of specific bonds, the Committee on District Courts may in its discretion procure

faithful performance of duty blanket bonds for ~~any or all of the districts enumerated in § 16.1-69.6 covering~~ all magistrates ~~included in such districts~~ and for the penalty contained in this section, unless in the discretion of the Committee, bonds with a larger penalty should be obtained. Such blanket bonds shall be made payable to the Commonwealth and shall cover all funds handled by a magistrate whether such funds belong to the Commonwealth or any political subdivision thereof. Provided further, that in those instances where specific bonds for magistrates are in effect, the Committee on District Courts may, whenever it deems it advisable, terminate such specific bonds upon obtaining a blanket bond covering such magistrates with appropriate refunds or credit being made for the unearned premiums on the specific bonds terminated. A copy of any such blanket bond so procured shall be filed with the State Comptroller and with the clerk of the respective circuit ~~court which exercises jurisdiction over the district wherein such magistrate shall serve~~ *courts*. The premiums for such blanket bonds shall be paid by the Commonwealth.

§ 19.2-43. Duty of Executive Secretary of Supreme Court.

It shall be the duty of the Executive Secretary of the Supreme Court to ~~assist the chief general district judges and general district courts in the supervision and mandatory training of magistrates for which purpose he~~ *exercise general supervisory power over the administration of magistrates and* [ ~~*promulgate such rules and regulations*~~ *adopt such policies* ] *as are deemed necessary to supplement or clarify the provisions of this chapter with respect to such magistrates, to include fixing the time and place such magistrates shall serve. The Executive Secretary* shall ~~be authorized to~~ conduct training sessions and meetings for magistrates and provide information and materials for their use. He may appoint one or more magistrates to assist him and, in addition, ~~with the approval of the Chief Justice,~~ require annual reports to be filed by the magistrates on their work as such, fees associated therewith and other information pertinent to their office, on forms to be furnished by him. *The Executive Secretary may appoint and employ such personnel as are needed to manage the magistrate system and carry out the duties and responsibilities conferred upon the Executive Secretary by this chapter.*

§ 19.2-44. Territorial jurisdiction.

A magistrate shall *be authorized to* exercise the powers conferred by this title only in the ~~judicial district~~ *magisterial region or regions* for which he is appointed. However, a magistrate may exercise these powers ~~in a contiguous political subdivision~~ *throughout the Commonwealth* when so authorized by ~~his appointing authority and the chief circuit court judge of the district to which assistance is to be provided~~ *the Executive Secretary upon a determination that such assistance is necessary.*

§ 19.2-45. Powers enumerated.

A magistrate shall have the following powers only:

(1) To issue process of arrest in accord with the provisions of §§ 19.2-71 to 19.2-82 of the Code;

(2) To issue search warrants in accord with the provisions of §§ 19.2-52 to 19.2-60 of the Code;

(3) To admit to bail or commit to jail all persons charged with offenses subject to the limitations of and in accord with general laws on bail;

(4) The same power to issue warrants and subpoenas ~~within such county or city~~ as is conferred upon district courts. *A copy of all felony warrants issued at the request of a citizen shall be promptly delivered to the attorney for the Commonwealth for the county or city in which the warrant is returnable.* Upon the request of the attorney for the Commonwealth, a copy of any ~~criminal~~ *misdemeanor* warrant issued at the request of a citizen shall be delivered to the attorney for the Commonwealth for such county or city. All attachments, warrants and subpoenas shall be returnable before a district court or any court of limited jurisdiction continued in operation pursuant to § 16.1-70.1;

(5) To issue civil warrants directed to the sheriff or constable of the county or city wherein the defendant resides, together with a copy thereof, requiring him to summon the person against whom the claim is, to appear before a district court on a certain day, not exceeding thirty days from the date thereof to answer such claim. If there be two or more defendants and any defendant resides outside the jurisdiction in which the warrant is issued, the summons for such defendant residing outside the jurisdiction may be directed to the sheriff of the county or city of his residence, and such warrant may be served and returned as provided in § 16.1-80;

(6) To administer oaths and take acknowledgments;

(7) To act as conservators of the peace;

(8), (9) [Repealed.]

(10) To perform such other acts or functions specifically authorized by law.

§ 19.2-46. Compensation.

The salaries of all magistrates shall be fixed and paid as provided in § 19.2-46.1. The salaries referred to herein shall be in lieu of all fees which may accrue to the recipient by virtue of his office.

~~Each substitute magistrate shall receive for his services a per diem compensation as may be established by the Committee on District Courts.~~

§ 19.2-46.1. Salaries to be fixed by the Executive Secretary; limitations; mileage allowance.

Salaries of magistrates and any other personnel in the office of the magistrate shall be fixed by the

~~Committee on District Courts established pursuant to § 16.1-69.33.~~ *Executive Secretary of the Supreme Court.* Such salaries shall be fixed by the ~~Committee~~ *Executive Secretary* at least annually at such time as ~~it~~ *he* deems proper and as soon as practicable thereafter certified to the Comptroller ~~and the Executive Secretary of the Supreme Court~~.

~~In addition to the salary authorized by this section, a magistrate may be reimbursed by the county or city for reasonable mileage expenses actually incurred in the performance of his duties.~~

In determining the salary of any magistrate, the ~~Committee~~ *Executive Secretary* shall consider the work load of and territory and population served by the magistrate and such other factors ~~it~~ *he* deems relevant. ~~It may require of any magistrate or district judge information on the operation of the office of the magistrate.~~

The governing body of any county or city may add to the fixed compensation of magistrates such amount as the governing body may appropriate with the total amount not to exceed fifty percent of the amount paid by the Commonwealth to magistrates *provided such additional compensation was in effect on June 30, 2008, for such magistrates and any magistrate receiving such additional compensation continues in office without a break in service. However, the total amount of additional compensation may not be increased after June 30, 2008*. No additional amount paid by a local governing body shall be chargeable to the Executive Secretary of the Supreme Court, nor shall it remove or supersede any authority, control or supervision of the Executive Secretary or Committee on District Courts.

§ 19.2-48. Audits.

The Auditor of Public Accounts shall audit the records of all magistrates who serve ~~in~~ any county or city when auditing the records of the district courts of such county or city or upon request of the chief district judge of the district in which such county or city is located.

§ 19.2-48.1. Quarters for magistrates.

A. ~~Each county and city having a general district court or juvenile and domestic relations district court and having one or more magistrates appointed pursuant to Article 3 (§ 19.2-33 et seq.) of this chapter,~~ *The counties and cities served by a magistrate or magistrates* shall provide suitable quarters for such magistrates, *including a site for any videoconferencing equipment necessary to provide remote access to such magistrates*. Insofar as possible, such quarters should be located in a public facility and should be appropriate to conduct the affairs of a judicial officer as well as provide convenient access to the public and law-enforcement officers. The county or city shall also provide all furniture and other equipment necessary for the efficient operation of the office.

B. Wherever practical, the office of magistrate shall be located at the county seat. However, offices may be located at other locations in the county, or city adjacent thereto, whenever such additional offices are necessary to effect the efficient administration of justice.

§ 19.2-77. Escape, flight and pursuit; arrest anywhere in Commonwealth.

Whenever a person in the custody of an officer shall escape or whenever a person shall flee from an officer attempting to arrest him, such officer, with or without a warrant, may pursue such person anywhere in the Commonwealth and, when actually in close pursuit, may arrest him wherever he is found. If the arrest is made in a county or city adjoining that from which the accused fled, or in any area of the Commonwealth within one mile of the boundary of the county or city from which he fled, the officer may forthwith return the accused before the proper official of the county or city from which he fled. If the arrest is made beyond the foregoing limits, the officer shall proceed according to the provisions of § 19.2-76, and if such arrest is made without a warrant, the officer shall procure a warrant from the magistrate ~~of~~ *serving* the county or city wherein the arrest was made, charging the accused with the offense committed in the county or city from which he fled.

§ 19.2-81.3. Arrest without a warrant authorized in cases of assault and battery against a family or household member and stalking and for violations of protective orders; procedure, etc.

A. Any law-enforcement officer, as defined in § 19.2-81, may arrest without a warrant for an alleged violation of §§ 18.2-57.2, 18.2-60.4 or 16.1-253.2 regardless of whether such violation was committed in his presence, if such arrest is based on probable cause or upon personal observations or the reasonable complaint of a person who observed the alleged offense or upon personal investigation.

B. A law-enforcement officer having probable cause to believe that a violation of § 18.2-57.2 or 16.1-253.2 has occurred shall arrest and take into custody the person he has probable cause to believe, based on the totality of the circumstances, was the predominant physical aggressor unless there are special circumstances which would dictate a course of action other than an arrest. The standards for determining who is the predominant physical aggressor shall be based on the following considerations: (i) who was the first aggressor, (ii) the protection of the health and safety of family and household members, (iii) prior complaints of family abuse by the allegedly abusing person involving the family or household members, (iv) the relative severity of the injuries inflicted on persons involved in the incident, (v) whether any injuries were inflicted in self-defense, (vi) witness statements, and (vii) other observations.

C. Regardless of whether an arrest is made, the officer shall file a written report with his department, which shall state whether any arrests were made, and if so, the number of arrests, specifically including any incident in which he has probable cause to believe family abuse has occurred, and, where required, including a complete statement in writing that there are special circumstances that would dictate a course of action other than an arrest. The officer shall provide the allegedly abused person, both orally and in writing, information regarding the legal and community resources available to the allegedly abused person. Upon request of the allegedly abused person, the department shall make a summary of the report available to the allegedly abused person.

D. In every case in which a law-enforcement officer makes an arrest under this section, he shall petition for an emergency protective order as authorized in § 16.1-253.4 when the person arrested and taken into custody is brought before the magistrate, except if the person arrested is a minor, a petition for an emergency protective order shall not be required. Regardless of whether an arrest is made, if the officer has probable cause to believe that a danger of acts of family abuse exists, the law-enforcement officer shall seek an emergency protective order under § 16.1-253.4, except if the suspected abuser is a minor, a petition for an emergency protective order shall not be required.

E. A law-enforcement officer investigating any complaint of family abuse, including but not limited to assault and battery against a family or household member shall, upon request, transport, or arrange for the transportation of an abused person to a hospital~~,~~ *or* safe shelter, or *to appear before a* magistrate. Any local law-enforcement agency may adopt a policy requiring an officer to transport or arrange for transportation of an abused person as provided in this subsection.

F. The definition of "family or household member" in § 16.1-228 applies to this section.

G. As used in this section, a "law-enforcement officer" means (i) any full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth and (ii) any member of an auxiliary police force established pursuant to subsection B of § 15.2-1731. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

§ 19.2-119. Definitions.

As used in this chapter:

"Bail" means the pretrial release of a person from custody upon those terms and conditions specified by order of an appropriate judicial officer.

"Bond" means the posting by a person or his surety of a written promise to pay a specific sum, secured or unsecured, ordered by an appropriate judicial officer as a condition of bail to assure performance of the terms and conditions contained in the recognizance.

"Criminal history" means records and data collected by criminal justice agencies or persons consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations or other formal charges, and any deposition arising therefrom.

"Judicial officer" means, unless otherwise indicated, any magistrate ~~within~~ ~~his~~ *serving the* jurisdiction, any judge of a district court and the clerk or deputy clerk of any district court or circuit court within their respective cities and counties, any judge of a circuit court, any judge of the Court of Appeals and any justice of the Supreme Court of Virginia.

"Person" means any accused, or any juvenile taken into custody pursuant to § 16.1-246.

"Recognizance" means a signed commitment by a person to appear in court as directed and to adhere to any other terms ordered by an appropriate judicial officer as a condition of bail.

§ 19.2-152.4:3. Duties and responsibilities of local pretrial services officers.

A. Each local pretrial services officer, for the jurisdictions served, shall:

1. Investigate and interview defendants arrested on state and local warrants and who are detained in jails located in jurisdictions served by the agency while awaiting a hearing before any court that is considering or reconsidering bail, at initial appearance, advisement or arraignment, or at other subsequent hearings;

2. Present a pretrial investigation report with recommendations to assist courts in discharging their duties related to granting or reconsidering bail;

3. Supervise and assist all defendants residing within the jurisdictions served and placed on pretrial supervision by any judicial officer within the jurisdictions to ensure compliance with the terms and conditions of bail;

4. Conduct random drug and alcohol tests on any defendant under supervision for whom a judicial officer has ordered testing or who has been required to refrain from excessive use of alcohol or use of any illegal drug or controlled substance or other defendant-specific condition of bail related to alcohol or substance abuse;

5. Seek a capias from any judicial officer pursuant to § 19.2-152.4:1 for any defendant placed under supervision or the custody of the agency who fails to comply with the conditions of bail or supervision,

when continued liberty or noncompliance presents a risk of flight, a risk to public safety or risk to the defendant;

6. Seek an order to show cause why the defendant should not be required to appear before the court in those cases requiring a subsequent hearing before the court;

7. Provide defendant-based information to assist any law-enforcement officer with the return to custody of defendants placed on supervision for which a capias has been sought; and

8. Keep such records and make such reports as required by the Commonwealth of Virginia Department of Criminal Justice Services.

B. Each local pretrial services officer, for the jurisdictions served, may provide the following optional services, as appropriate and when available resources permit:

1. Conduct, subject to court approval, drug and alcohol screenings, or tests at investigation pursuant to subsection B of § 19.2-123 or following release to supervision, and conduct or facilitate the preparation of screenings or assessments or both pursuant to state approved protocols;

2. Facilitate placement of defendants in a substance abuse education or treatment program or services or other education or treatment service when ordered as a condition of bail;

3. Sign for the custody of any defendant investigated by a pretrial services officer, and released by a court to pretrial supervision as the sole term and condition of bail or when combined with an unsecured bond;

4. Provide defendant information and investigation services for those who are detained in jails located in jurisdictions served by the agency and are awaiting an initial bail hearing before a ~~local~~ magistrate;

5. Supervise defendants placed by any judicial officer on home electronic monitoring as a condition of bail and supervision;

6. Prepare, for defendants investigated, the financial statement-eligibility determination form for indigent defense services; and

7. Subject to approved procedures and if so requested by the court, coordinate for defendants investigated, services for court-appointed counsel and for interpreters for foreign-language speaking and hearing-impaired defendants.

§ 20-70. No warrant of arrest to issue.

Except as otherwise in this chapter provided, no warrant of arrest shall be issued by a magistrate against any person within the terms of this chapter, but all proceedings shall be instituted upon petition as aforesaid, provided that upon affidavit of the spouse or other person that there is reasonable cause to believe that the spouse or parent is about to leave the jurisdiction of the court with intent to desert the spouse, child or children, the court *of,* or any magistrate ~~of~~ *serving,* the city or county may issue a warrant for the spouse or parent returnable before the court.

§ 20-84. Extradition.

Whenever the judge *of,* or magistrate ~~within~~ ~~whose~~ *serving, the* jurisdiction *wherein* such offense is alleged to have been committed shall, after an investigation of the facts and circumstances thereof, certify that in his opinion the charge is well founded and the case a proper one for extradition, or in any case if the cost of extradition is borne by the parties interested in the case, the person charged with having left the Commonwealth with the intention of evading the terms of his or her probation or of abandoning or deserting his or her spouse, or his or her child or children, or failing to support them, shall be apprehended and brought back to the county or city having jurisdiction of the case in accordance with the law providing for the apprehension and return to the Commonwealth of fugitives from justice, and upon conviction punished as hereinabove provided.

§ 27-32. Summoning witnesses and taking evidence.

In making investigations pursuant to § 27-31, the fire marshal may issue a summons directed to a sheriff or sergeant of any county, city or town commanding the officer to summon witnesses to attend before him at such time and place as he may direct. Any such officer to whom the summons is delivered, shall forthwith execute it, and make return thereof to the fire marshal at the time and place named therein.

Witnesses, on whom the summons before mentioned is served, may be compelled by the fire marshal to attend and give evidence, and shall be liable in like manner as if the summons had been issued by a ~~justice of the peace~~ *magistrate* in a criminal case. They shall be sworn by the fire marshal before giving evidence, and their evidence shall be reduced to writing by him, or under his direction, and subscribed by them respectively.

§ 27-32.1. Right of entry to investigate cause of fire or explosion.

If in making such an investigation, the fire marshal shall make complaint under oath that there is good cause of suspicion or belief that the burning of or explosion on any land, building or vessel or of any object was caused by any act constituting a crime as defined in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2 and that he has been refused admittance to the land, building or vessel or to

examine the object in or on which any fire or explosion occurred within fifteen days after the extinguishment of such, any ~~justice of the peace of~~ *magistrate serving* the city or county where the land, building, vessel or object is located may issue a warrant to the sheriff of the county or the sergeant of the city requiring him to enter such land, building or vessel or the premises upon which the object is located in the company of the fire marshal for the purposes of conducting a search for evidence showing that such fire or explosion was caused by any act defined in Article 1 of Chapter 5, of Title 18.2.

§ 27-32.2. Issuance of fire investigation warrant.

If, in undertaking such an investigation, the fire marshal makes an affidavit under oath that the origin or cause of any fire or explosion on any land, building, or vessel, or of any object is undetermined and that he has been refused admittance thereto, or is unable to gain permission to enter such land, building, or vessel, or to examine such object, within fifteen days after the extinguishing of such, any magistrate ~~of~~ *serving* the city or county where the land, building, vessel, or object is located may issue a fire investigation warrant to the fire marshal authorizing him to enter such land, building, vessel, or the premises upon which the object is located for the purpose of determining the origin and source of such fire or explosion. If the fire marshal, after gaining access to any land, building, vessel, or other premises pursuant to such a fire investigation warrant, has probable cause to believe that the burning or explosion was caused by any act constituting a criminal offense, he shall discontinue the investigation until a search warrant has been obtained pursuant to § 27-32.1, or consent to conduct the search has otherwise been given.

§ 27-37.1. Right of entry to investigate releases of hazardous material, hazardous waste, or regulated substances.

The fire marshal shall have the right, if authorized by the governing body of the county, city, or town appointing the fire marshal, to enter upon any property from which a release of any hazardous material, hazardous waste, or regulated substance, as defined in § 10.1-1400 or § 62.1-44.34:8, has occurred or is reasonably suspected to have occurred and which has entered into the ground water, surface water or soils of the county, city or town in order to investigate the extent and cause of any such release. If, in undertaking such an investigation, the fire marshal makes an affidavit under oath that the origin or cause of any such release is undetermined and that he has been refused admittance to the property, or is unable to gain permission to enter the property, any magistrate ~~of~~ *serving* the city or county where the property is located may issue an investigation warrant to the fire marshal authorizing him to enter such property for the purpose of determining the origin and source of the release. If the fire marshal, after gaining access to any property pursuant to such investigation warrant, has probable cause to believe that the release was caused by any act constituting a criminal offense, he shall discontinue the investigation until a search warrant has been obtained or consent to conduct the search has otherwise been given.

§ 37.2-808. Emergency custody; issuance and execution of order.

A. Any magistrate may issue, upon the sworn petition of any responsible person or upon his own motion, an emergency custody order when he has probable cause to believe that any person ~~within his judicial district~~ (i) has mental illness, (ii) presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill as to be substantially unable to care for himself, (iii) is in need of hospitalization or treatment, and (iv) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment.

B. Any person for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board or behavioral health authority who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. Transportation under this section shall include transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in accordance with state and federal law. Transportation under this section shall include transportation to a medical facility for a medical evaluation if a physician at the hospital in which the person subject to the emergency custody order may be detained requires a medical evaluation prior to admission.

D. The magistrate shall order the primary law-enforcement agency from the jurisdiction served by the community services board or behavioral health authority that designated the person to perform the evaluation required in subsection B to execute the order and provide transportation. If the community services board or behavioral health authority serves more than one jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular jurisdiction within the community services board's or behavioral health authority's service area where the person who is the subject of the emergency custody order was taken into custody or, if the person has not yet been taken into custody, the primary law-enforcement agency from the jurisdiction where the person is presently located to

execute the order and provide transportation.

E. A law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing an emergency custody order pursuant to this section.

F. A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a person meets the criteria for emergency custody as stated in this section may take that person into custody and transport that person to an appropriate location to assess the need for hospitalization or treatment without prior authorization. Such evaluation shall be conducted immediately.

G. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

H. The person shall remain in custody until a temporary detention order is issued or until the person is released, but in no event shall the period of custody exceed four hours.

I. If an emergency custody order is not executed within four hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate ~~thereof~~ *serving the jurisdiction of the issuing court*.

§ 37.2-809. Involuntary temporary detention; issuance and execution of order.

A. For the purposes of this section:

"Designee of the local community services board" means an examiner designated by the local community services board or behavioral health authority who (i) is skilled in the assessment and treatment of mental illness, (ii) has completed a certification program approved by the Department, (iii) is able to provide an independent examination of the person, (iv) is not related by blood or marriage to the person being evaluated, (v) has no financial interest in the admission or treatment of the person being evaluated, (vi) has no investment interest in the facility detaining or admitting the person under this article, and (vii) except for employees of state hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

"Employee" means an employee of the local community services board or behavioral health authority who is skilled in the assessment and treatment of mental illness and has completed a certification program approved by the Department.

"Investment interest" means the ownership or holding of an equity or debt security, including shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.

B. A magistrate may issue, upon the sworn petition of any responsible person or upon his own motion and only after an in-person evaluation by an employee or a designee of the local community services board, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician or clinical psychologist treating the person, that the person (i) has mental illness, (ii) presents an imminent danger to himself or others as a result of mental illness or is so seriously mentally ill as to be substantially unable to care for himself, (iii) is in need of hospitalization or treatment, and (iv) is unwilling to volunteer or incapable of volunteering for hospitalization or treatment. The magistrate shall also consider the recommendations of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision.

C. A magistrate may issue a temporary detention order without an emergency custody order proceeding. A magistrate may issue a temporary detention order without a prior in-person evaluation if (i) the person has been personally examined within the previous 72 hours by an employee or a designee of the local community services board or (ii) there is a significant physical, psychological, or medical risk to the person or to others associated with conducting such evaluation.

D. An employee or a designee of the local community services board shall determine the facility of temporary detention for all individuals detained pursuant to this section. The facility of temporary detention shall be one that has been approved pursuant to regulations of the Board. The facility shall be identified on the preadmission screening report and indicated on the temporary detention order. Except as provided in § 37.2-811 for defendants requiring hospitalization in accordance with subdivision A 2 of § 19.2-169.6, the person shall not be detained in a jail or other place of confinement for persons charged with criminal offenses.

E. Any facility caring for a person placed with it pursuant to a temporary detention order is authorized to provide emergency medical and psychiatric services within its capabilities when the facility determines that the services are in the best interests of the person within its care. The costs incurred as a result of the hearings and by the facility in providing services during the period of temporary detention shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by

regulation, establish a reasonable rate per day of inpatient care for temporary detention.

F. The employee or the designee of the local community services board who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order, the insurance status of the person. Where coverage by a third party payor exists, the facility seeking reimbursement under this section shall first seek reimbursement from the third party payor. The Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances covered by the third party payor have been received.

G. The duration of temporary detention shall not exceed 48 hours prior to a hearing. If the 48-hour period herein specified terminates on a Saturday, Sunday, or legal holiday, the person may be detained, as herein provided, until the next day that is not a Saturday, Sunday, or legal holiday.

H. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if the office is not open, to any magistrate ~~thereof~~ *serving the jurisdiction of the issuing court*. Subsequent orders may be issued upon the original petition within 96 hours after the petition is filed. However, a magistrate must again obtain the advice of an employee or a designee of the local community services board prior to issuing a subsequent order upon the original petition. Any petition for which no temporary detention order or other process in connection therewith is served on the subject of the petition within 96 hours after the petition is filed shall be void and shall be returned to the office of the clerk of the issuing court.

I. The chief judge of each general district court shall establish and require that a magistrate, as provided by this section, be available seven days a week, 24 hours a day, for the purpose of performing the duties established by this section. Each community services board or behavioral health authority shall provide to each general district court and magistrate's office within its service area a list of its employees and designees who are available to perform the evaluations required herein.

§ 37.2-1103. Emergency custody orders for adult persons who are incapable of making an informed decision as a result of physical injury or illness.

A. Based upon the opinion of a licensed physician that an adult person is incapable of making an informed decision as a result of a physical injury or illness and that the medical standard of care indicates that testing, observation, and treatment are necessary to prevent imminent and irreversible harm, a magistrate may issue, for good cause shown, an emergency custody order for the adult person to be taken into custody and transported to a hospital emergency room for testing, observation, or treatment.

B. Prior to issuance of an emergency custody order pursuant to this section, the magistrate shall ascertain that there is no legally authorized person available to give consent to necessary treatment for the adult person and that the adult person (i) is incapable of making an informed decision regarding obtaining necessary treatment, (ii) has refused transport to obtain such necessary treatment, (iii) has indicated an intention to resist such transport, and (iv) is unlikely to become capable of making an informed decision regarding obtaining necessary treatment within the time required for such decision.

C. An opinion by the licensed physician that an adult person is incapable of making an informed decision as a result of physical injury or illness shall only be rendered after the licensed physician has communicated electronically or personally with the emergency medical services personnel on the scene and has attempted to communicate electronically or personally with the adult person to obtain information and medical data concerning the cause of the adult person's incapacity, has attempted to obtain consent from the adult person, and has failed to obtain consent.

D. If there is a change in the person's condition, the emergency medical services personnel shall contact the licensed physician. If at any time the licensed physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on the person's decision on whether to consent to further observation, testing, or treatment.

E. Upon reaching the emergency room, the person shall be evaluated by a licensed physician. If the physician determines that the person meets the requirements of § 37.2-1104, the physician may apply for a temporary detention order pursuant to that that section. If the physician determines that the person does not meet the requirements of § 37.2-1104, the person shall be released from custody immediately. The person shall remain in custody until this evaluation is performed, but in no event shall the period of custody under this section exceed four hours.

F. The law-enforcement officer may lawfully go to or be sent beyond the territorial limits of the county, city or town in which he serves to any point in the Commonwealth for the purpose of executing an emergency custody order pursuant to this section. Nothing herein shall preclude a law-enforcement officer from obtaining emergency medical treatment or further medical evaluation at any time for a person in his custody as provided in this section.

G. If an emergency custody order is not executed within four hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is

not open, to any magistrate ~~thereof~~ *serving the jurisdiction of the issuing court*.

§ 37.2-1104. Temporary detention in hospital for testing, observation or treatment.

Upon the advice of a licensed physician who has attempted to obtain consent and upon a finding of probable cause to believe that an adult person within the court's ~~or~~ a ~~magistrate's~~ jurisdiction is incapable of making an informed decision regarding treatment of a physical or mental disorder or is incapable of communicating such a decision due to a physical or mental disorder and that the medical standard of care calls for testing, observation, or treatment of the disorder within the next 24 hours to prevent death, disability, or a serious irreversible condition, the court or, if the court is unavailable, a magistrate *serving the jurisdiction* may issue an order authorizing temporary detention of the person by a hospital emergency room or other appropriate facility and authorizing such testing, observation, or treatment. The detention may not be for a period exceeding 24 hours, unless extended by the court as part of an order authorizing treatment under § 37.2-1101. If, before completion of authorized testing, observation, or treatment, the physician determines that a person subject to an order under this subsection has become capable of making and communicating an informed decision, the physician shall rely on the person's decision on whether to consent to further testing, observation, or treatment. If, before issuance of an order under this subsection or during its period of effectiveness, the physician learns of an objection by a member of the person's immediate family to the testing, observation, or treatment, he shall so notify the court or magistrate, who shall consider the objection in determining whether to issue, modify, or terminate the order.

§ 43-29. Liens of landlords and farmers for advances to tenants and laborers.

(1) Provision for lien; enforcement and priority. - If any owner or occupier of land contract with any person to cultivate or raise livestock on such land as his tenant for rent either in money or a share of the crop or livestock; or if any person engaged in the cultivation of land contract with any laborer thereon for a share of the crop or the livestock raised thereon as his wages; and such owner or occupier of the land, or such person engaged in the cultivation of land, shall make any advances in money, supplies, or other thing to such tenant or laborer, he shall have a lien to the extent of such advances on all the crops or livestock, or the share of such laborer in the crops or livestock that are made or seeded or raised, grown or fed on the land during the year in which the advances are made, which shall be prior to all other liens on such crops or livestock or such portion thereof, or share therein. And he shall have the same remedy for the enforcement of such lien by distress when the claim is due, or by attachment when the claim is not yet payable, as is given a landlord for the recovery of rent under § 55-230; provided, that he or his agent, shall, before suing out the distress warrant, make affidavit before the ~~justice~~ ~~of~~ ~~the~~ ~~peace~~ *magistrate* issuing the same to the amount of his claim, that it is then due and is for advances made under contract to a tenant cultivating or raising livestock on his land, or a laborer working or raising livestock on the same; and before suing out the attachment, make the like affidavit, and also at what time the claim will become payable, and that the debtor intends to remove, or is removing from such land such crops or livestock, or his portion thereof, or share therein, so that there will not be left enough to satisfy the claim. The person, whose crops or livestock are so distrained or attached, shall have all the rights and be entitled to all the remedies allowed a tenant against a distress or attachment for rent.

(2) When verified statement of advances required. - However, when the crops or livestock are subject to a lien of a fieri facias or attachment, whether a levy be actually made or not, it shall be the duty of the person claiming a lien under this section, upon the request of the sheriff, or any other party in interest, to render to the sheriff of the county wherein the crops or livestock are raised or grown, a complete and itemized statement under oath of the claims for advances, showing the nature of the claims, the dates of advancement and the respective amounts. And in case the person claiming advances fails to render to the sheriff of such county the verified itemized statement above provided for within ten days after the request has been made, he shall forever lose the benefit of the lien on the crops or livestock for advances granted him under this section.

(3) When further showing as to advances required. - If the execution creditor or attachment creditor desires to contest the validity of the claims for advances, he may cause the clerk of the circuit court of the county in which such crops are grown or livestock raised to summon the person claiming the lien for advances to appear before such court and show to the satisfaction of the court that such money, supplies or other things of value were advanced for the purpose of, and were necessary in and about the cultivation of the crops or the raising of the livestock upon which the lien is claimed.

§ 46.2-104. Possession of registration cards; exhibiting registration card and licenses; failure to carry license or registration card.

The operator of any motor vehicle, trailer, or semitrailer being operated on the highways in the Commonwealth, shall have in his possession: (i) the registration card issued by the Department or the registration card issued by the state or country in which the motor vehicle, trailer, or semitrailer is registered, and (ii) his driver's license, learner's permit, or temporary driver's permit.

The owner or operator of any motor vehicle, trailer, or semitrailer shall stop on the signal of any law-enforcement officer who is in uniform or shows his badge or other sign of authority and shall, on the officer's request, exhibit his registration card, driver's license, learner's permit, or temporary driver's permit and write his name in the presence of the officer, if so required, for the purpose of establishing his identity.

Every person licensed by the Department as a driver or issued a learner's or temporary driver's permit who fails to carry his license or permit, and the registration card for the vehicle which he operates, shall be guilty of a traffic infraction and upon conviction punished by a fine of ten dollars. However, if any person summoned to appear before a court for failure to display his license, permit, or registration card presents to the officer issuing the summons or a magistrate ~~of~~ *serving* the county or city in which the summons was issued, before the return date of the summons, a license or permit issued to him prior to the time the summons was issued or a registration card, as the case may be, or appears pursuant to the summons and produces before the court a license or permit issued to him prior to the time the summons was issued or a registration card, as the case may be, he shall have complied with the provisions of this section.

§ 49-6. Oath or affidavit required of purchaser of fuel, etc.

Whenever the purchaser of any fuel, provisions or other thing, whether of like kind with fuel and provisions or not, is required to make oath or affidavit as to the quantity or value of such fuel, provisions or other thing then in the possession of such purchaser, or to make any other oath or affidavit in relation thereto before he is allowed to purchase the same, such oath or affidavit may be administered by the seller with like effect, and with the same penalties for false swearing, as if the same had been administered by a ~~justice of the peace~~ *magistrate*.

§ 55-205. Right of recovery by former owner.

The former owner may at any time after recover the valuation money except the amount of the clerk's and printer's fees and such compensation for keeping the property as shall be certified under oath by any two freeholders in the county or corporation where the property was valued to be reasonable, and also fees of ~~the justice of the peace and~~ the freeholders for services rendered by them.

§ 55-230. When and by whom distress made.

A distress action for rent may be brought within five years from the time the rent becomes due, and not afterwards, whether the lease is ended or not. The distress shall be made by a sheriff or high constable of the county or city wherein the premises yielding the rent, or some part thereof, may be, or the goods liable to distress may be found, under warrant from a judge *of,* or *a* magistrate ~~for~~ *serving,* the judicial district. Such warrant shall be founded upon a sworn petition of the person claiming the rent, or his agent, that (i) the petitioner believes the amount of money or other thing by which the rent is measured (to be specified in the petition in accordance with § 55-231) is justly due to the claimant for rent reserved upon contract from the person of whom it is claimed, (ii) the petitioner alleges one or more of the grounds mentioned in § 8.01-534 and sets forth in the petition specific facts in support of such allegation and (iii) the rent claimed is for rent due within five years from the time that it becomes due. The petition shall also specify the amount of the rent claimed and request either levy or seizure of the affected property prior to trial. The plaintiff shall, at the time of suing out a distress, give bond in conformity with the provisions of § 8.01-537.1. The plaintiff praying for a distress warrant shall, at the time that he files his petition, pay the proper costs, fees and taxes, and in the event of his failure to do so, the distress warrant shall not be issued.

A judge or magistrate shall make an ex parte review of the petition and may receive evidence only in the form of a sworn petition which shall be filed in the office of the clerks of court. The warrant may be issued in accordance with the prayer of the petition by a judge or magistrate only upon a determination that there appears from the petition that there is reasonable cause to believe that one of the grounds mentioned in § 8.01-534 exists, the allegations required to be in the petition are true and that bond which complies with § 8.01-537.1 has been posted.

Each copy of the distress warrant shall be issued and served on each defendant together with (i) a form for requesting a hearing of exemption from levy or seizure, as provided in § 8.01-546.1, and (ii) a copy of the bond. The distress warrant may be issued or executed on any day, including a Saturday, Sunday or other legal holiday. Service shall be made in accordance with the methods described in § 8.01-487.1. The provisions of § 8.01-546.2 shall govern claims for exemption.

The officer into whose hands the warrant is delivered shall levy or seize as directed in the warrant, except as may be ~~otherwise~~ provided by statute, the property found on the premises of the tenant as provided by § 55-231. The officer shall return the warrant of distress to the court to which the warrant of distress is returnable by the return date unless otherwise notified by the court to make return by an earlier date.

§ 59.1-98. Procedure when violation charged; awarding possession of property to owner.

Whenever any person mentioned in § 59.1-94 or his agent shall make oath before any ~~justice of the peace~~ *magistrate*, or other officer empowered to issue criminal warrants, that he has reason to believe,

and does believe, that within the city, town or county ~~of such justice of the peace~~ *served by such magistrate* or other officer, any of his bottles, boxes, siphons, siphon heads, crates, tins, kegs, or clean laundered or soiled articles mentioned in this chapter a description of the names, marks or devices whereon has been filed and published as aforesaid, are being unlawfully used or filled or had, by any person manufacturing or selling soda, mineral or aerated waters, cider, ginger ale, milk, cream, soft drinks or other beverages or medicines, medical preparations, perfumery, oils, compounds or mixtures, or that any junk dealer or dealer in secondhand articles, vendor of bottles, or any other person has any such bottles, boxes, siphons, siphon heads, crates, tins, kegs or clean laundered or soiled articles mentioned in this chapter in his possession or secreted in any place, the ~~justice of the peace~~ *magistrate* or other officer, before whom such oath is made must thereupon issue a search warrant to discover and obtain the same, and may also issue his warrant stating the offense charged, and cause to be brought before any ~~county or municipal~~ *general district* court having jurisdiction the person in whose possession such bottles, boxes, siphons, siphon heads, crates, tins, kegs or clean laundered or soiled articles mentioned in this chapter may be found, and shall then inquire into the circumstances of such possession and if such ~~county or municipal~~ *general district* court finds such person has been guilty of a violation of § 59.1-96, it must impose the punishment therein prescribed, and it shall award possession of the property taken upon such warrant to the owner thereof.

§ 59.1-106. Sale of unclaimed timber, etc., found adrift; disposition of proceeds.

Any person, except the owner thereof, taking up and securing any sawlog, pile, hewn timber or square timber detached from any raft and found adrift or aground on any of the waters or streams mentioned in § 59.1-103, shall promptly report such fact to the owner thereof, or shall lodge a list containing a description of the quantity, quality, and marks, if any, of such timber with a ~~justice of the peace living nearest to the place~~ *magistrate serving the jurisdiction* where such timber was so found and secured, which ~~justice of the peace~~ *magistrate* shall promptly advertise the same for five consecutive days in a newspaper published in the City of Norfolk. If such timber shall not be claimed by the owner thereof within thirty days after such publication it shall be lawful for the ~~justice of the peace~~ *magistrate* to order the sale thereof at public auction by an officer after giving five days' notice of the time, place, and terms of such sale by not less than six handbills posted in the most public places in the vicinity where the same was found and within the county wherein the ~~justice of the peace may reside~~ *magistrate serves*. Out of the proceeds of such sale the ~~justice of the peace~~ *magistrate*, after paying the expenses of the advertisement and handbills, together with all the other costs of such proceeding at law, shall pay to the person or persons who found and secured the timber ten cents for each piece thereof so taken and secured, and the residue of such proceeds of sale shall be paid into the state treasury for the benefit of the Commonwealth.

**2. That §§ 19.2-30 and 19.2-41 of the Code of Virginia are repealed.**