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HOUSE BILL NO. 1874

Offered January 14, 2009

Prefiled January 12, 2009

A BILL to amend and reenact §§ 19.2-45, 19.2-71, and 19.2-72 of the Code of Virginia, relating to power of magistrates to issue felony arrest warrants.

Patron—Cosgrove

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-45, 19.2-71, and 19.2-72 of the Code of Virginia are amended and reenacted as follows:

§ 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 as is conferred upon district courts *and as limited by the provisions of §§ 19.2-71 through 19.2-82*. 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 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~~ 30 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(8), (9) [Repealed.]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.

§ 19.2-71. Who may issue process of arrest.

A. Process for the arrest of a person charged with a criminal offense may be issued by the judge, or clerk of any circuit court, any general district court, any juvenile and domestic relations district court, or any magistrate as provided for in Chapter 3 (§ 19.2-26 et seq.) of this title. *However, no magistrate may issue an arrest warrant for a felony offense upon the basis of a citizen complaint without prior authorization from the attorney for the Commonwealth or from a law-enforcement agency in his jurisdiction unless the person who is to be issued the warrant is already under arrest pursuant to § 19.2-82.*

B. No law-enforcement officer shall seek issuance of process by any judicial officer, for the arrest of a person for the offense of capital murder as defined in § 18.2-31, without prior authorization by the attorney for the Commonwealth. Failure to comply with the provisions of this subsection shall not be (i) a basis upon which a warrant may be quashed or deemed invalid, (ii) deemed error upon which a conviction or sentence may be reversed or vacated, or (iii) a basis upon which a court may prevent or delay execution of sentence.

§ 19.2-72. When it may issue; what to recite and require.

On complaint of a criminal offense to any officer authorized to issue criminal warrants he shall examine on oath the complainant and any other witnesses, or when such officer shall suspect that an offense punishable otherwise than by a fine has been committed he may, without formal complaint, issue a summons for witnesses and shall examine such witnesses. *A written complaint shall be required if the complainant is not a law-enforcement officer.* If upon such examination such officer finds that there is probable cause to believe the accused has committed an offense, such officer shall issue a warrant for his arrest, *except that no magistrate may issue an arrest warrant upon the basis of a citizen*

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59 *complaint for a felony offense without prior authorization from the attorney for the Commonwealth or*
60 *from a law-enforcement agency in his jurisdiction, unless the person who is to be issued the warrant is*
61 *already under arrest pursuant to § 19.2-82. The warrant shall (i) be directed to an appropriate officer or*
62 *officers, (ii) name the accused or, if his name is unknown, set forth a description by which he can be*
63 *identified with reasonable certainty, (iii) describe the offense charged with reasonable certainty, (iv)*
64 *command that the accused be arrested and brought before a court of appropriate jurisdiction in the*
65 *county, city or town in which the offense was allegedly committed, and (v) be signed by the issuing*
66 *officer. The warrant shall require the officer to whom it is directed to summon such witnesses as shall*
67 *be therein named to appear and give evidence on the examination. But in a city or town having a police*
68 *force, the warrant shall be directed "To any policeman, sheriff or his deputy sheriff of such city (or*
69 *town)," and shall be executed by the policeman, sheriff or his deputy sheriff into whose hands it shall*
70 *come or be delivered. A sheriff or his deputy may execute an arrest warrant throughout the county in*
71 *which he serves and in any city or town surrounded thereby and effect an arrest in any city or town*
72 *surrounded thereby as a result of a criminal act committed during the execution of such warrant. The*
73 *venue for the prosecution of such criminal act shall be the jurisdiction in which the offense occurred.*