

VIRGINIA ACTS OF ASSEMBLY -- 2011 SESSION

CHAPTER 347

An Act to amend and reenact § 19.2-76.1 of the Code of Virginia, relating to destruction of unexecuted felony and misdemeanor warrants.

[S 756]

Approved March 22, 2011

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-76.1 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-76.1. Submission of quarterly reports concerning unexecuted felony and misdemeanor warrants and other criminal process; destruction; dismissal.

It shall be the duty of the chief law-enforcement officer of the police department or sheriff's office, whichever is responsible for such service, in each county, town or city of the Commonwealth to submit quarterly reports to the attorney for the Commonwealth for the county, town or city concerning unexecuted felony and misdemeanor arrest warrants, summonses, capiases or other unexecuted criminal processes as hereinafter provided. The reports shall list those existing felony arrest warrants in his possession that have not been executed within seven years of the date of issuance, those misdemeanor arrest warrants, summonses and capiases and other criminal processes in his possession that have not been executed within three years from the date of issuance, and those unexecuted misdemeanor arrest warrants, summonses and capiases in his possession that were issued for a now deceased person, based on mistaken identity or as a result of any other technical or legal error. The reports shall be submitted in writing no later than the tenth day of April, July, October, and January of each year, together with the unexecuted felony and misdemeanor warrants, or other unexecuted criminal processes listed therein. Upon receipt of the report and the warrants listed therein, the attorney for the Commonwealth shall petition the circuit court of the county or city for the destruction of such unexecuted felony and misdemeanor warrants, summonses, capiases or other unexecuted criminal processes. The attorney for the Commonwealth may petition that certain of the unexecuted warrants, summonses, capiases and other unexecuted criminal processes not be destroyed based upon justifiable continuing, active investigation of the cases. The circuit court shall order the destruction of each such unexecuted felony warrant and each unexecuted misdemeanor warrant, summons, capias and other criminal process except (i) any warrant which charges capital murder and (ii) any unexecuted criminal process whose preservation is deemed justifiable by the court. No arrest shall be made under the authority of any warrant or other process which has been ordered destroyed pursuant to this section. Nothing in this section shall be construed to relate to or affect the time within which a prosecution for a felony or a misdemeanor shall be commenced.

Notwithstanding the foregoing, an attorney for the Commonwealth may at any time move for the dismissal *and destruction* of any unexecuted warrant or summons issued by a magistrate upon presentation of such warrant or summons to the court in which the warrant or summons would otherwise be returnable. *The court shall not order the dismissal and destruction of any warrant which charges capital murder and shall not order the dismissal and destruction of an unexecuted criminal process whose preservation is deemed justifiable by the court.* Dismissal of such a warrant or summons shall be without prejudice.

As used herein, the term "chief law-enforcement officer" refers to the chiefs of police of cities, counties and towns and sheriffs of cities and counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.