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SENATE BILL NO. 794

Offered January 14, 2015

Prefiled December 31, 2014

A BILL to amend and reenact §§ 19.2-71, 19.2-72, and 19.2-271 of the Code of Virginia, relating to issuance of process of arrest for criminal offenses; testimony of certain judicial personnel.

Patron—Carrico

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-71, 19.2-72, and 19.2-271 of the Code of Virginia are amended and reenacted as follows:

§ 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~~ *criminal* offense upon the basis of a complaint by a person other than a law-enforcement officer or an animal control officer without prior authorization by the attorney for the Commonwealth or by a law-enforcement agency having jurisdiction over the alleged offense.

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 *judicial* officer authorized to issue criminal warrants he shall examine on oath the complainant and any other witnesses, or when such *judicial* 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 *judicial* officer finds that there is probable cause to believe the accused has committed an offense, ~~such~~ *the judicial* officer shall issue a warrant for his arrest, except that no magistrate may issue an arrest warrant for a ~~felony~~ *criminal* offense upon the basis of a complaint by a person other than a law-enforcement officer or an animal control officer without prior authorization by the attorney for the Commonwealth or by a law-enforcement agency having jurisdiction over the alleged offense. The warrant shall (i) be directed to an appropriate officer or officers, (ii) name the accused or, if his name is unknown, set forth a description by which he can be identified with reasonable certainty, (iii) describe the offense charged with reasonable certainty, (iv) command that the accused be arrested and brought before a court of appropriate jurisdiction in the county, city or town in which the offense was allegedly committed, and (v) be signed by the issuing officer. The warrant shall require the officer to whom it is directed to summon such witnesses as shall be therein named to appear and give evidence on the examination. But in a city or town having a police force, the warrant shall be directed "To any policeman, sheriff or his deputy sheriff of such city (or town)," and shall be executed by the policeman, sheriff or his deputy sheriff into whose hands it shall come or be delivered. A sheriff or his deputy may execute an arrest warrant throughout the county in which he serves and in any city or town surrounded thereby and effect an arrest in any city or town surrounded thereby as a result of a criminal act committed during the execution of such warrant. A jail officer as defined in § 53.1-1 employed at a regional jail or jail farm is authorized to execute a warrant of arrest upon an accused in his jail. The venue for the prosecution of such criminal act shall be the jurisdiction in which the offense occurred.

§ 19.2-271. Certain judicial officers incompetent to testify under certain circumstances (Supreme Court Rule 2:605 derived from this section); exceptions.

No judge shall be competent to testify in any criminal or civil proceeding as to any matter which came before him in the course of his official duties.

~~No~~ *Except as otherwise provided in this section, no* clerk of any court, magistrate, or other person having the power to issue warrants, shall be competent to testify in any criminal or civil proceeding~~,~~ ~~except proceedings wherein the defendant is charged with perjury,~~ as to any matter which came before him in the course of his official duties. Such person shall be competent to testify *as to a matter which*

came before him in the course of his official duties (i) in any criminal proceeding wherein the defendant is charged ~~pursuant to the provisions of § 18.2-460~~ *with perjury, (ii) in a criminal proceeding where the defendant is charged with a crime committed in the presence of the person,* or *(iii)* in any proceeding authorized pursuant to § 19.2-353.3. Notwithstanding any other provision of this section, any judge, clerk of any court, magistrate, or other person having the power to issue warrants, who is the victim of a crime, shall not be incompetent solely because of his office to testify in any criminal or civil proceeding arising out of the crime.