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HOUSE BILL NO. 1299

Offered January 22, 1996

A BILL to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 10.1:3, consisting of sections numbered 2.1-116.9:7 through 2.1-116.9:13, relating to deputy sheriffs' procedural guarantees.

Patrons—McEachin, Callahan, Croshaw, Cunningham, Fisher, Hall, Harris, Keating, Kilgore, Marshall, Nelms, Parrish, Purkey, Robinson, Rollison, Tata, Wagner, Wardrup and Way; Senators: Howell, Lucas, Newman, Schrock and Trumbo

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 10.1:3, consisting of sections numbered 2.1-116.9:7 through 2.1-116.9:13, as follows:

CHAPTER 10.1:3.

DEPUTY SHERIFFS' PROCEDURAL GUARANTEES.

§ 2.1-116.9:7. Definitions.

"Deputy sheriff" means any person, other than the sheriff, who in his official capacity is authorized by law to make arrests and who is a nonprobationary member of a sheriff's department. This term shall not include any supervisory, policy-making member of the department who is so designated in writing by the sheriff.

"Sheriff's department" means a department, bureau or force of any political subdivision of the Commonwealth where such department, bureau or force is headed by the sheriff of the political subdivision and which has fifteen or more deputy sheriffs.

§ 2.1-116.9:8. Sheriff's department; notice of charges; election to proceed under grievance procedure of local governing body.

Before any dismissal, demotion, transfer for punitive reasons or suspension without pay may be imposed in any sheriff's department, the following shall be complied with:

1. The deputy sheriff shall be notified in writing of all charges, of the evidentiary basis therefor, and of the action which may be taken;

2. Within a reasonable time after receiving this written notice, the deputy sheriff shall be given an opportunity to review the evidentiary basis for the charges and an opportunity to respond orally and in writing to the charges. The time period shall be determined by the sheriff's department, but in no event shall such period be less than five days, unless agreed to by the deputy sheriff;

3. In responding, the deputy sheriff may be assisted by a representative, including legal counsel, at the deputy sheriff's expense.

§ 2.1-116.9:9. Hearings.

A. Whenever a deputy sheriff is dismissed, demoted, suspended or transferred for punitive reasons, he may, following such action and within a reasonable time as established by the sheriff's department, request a hearing. If such request is timely made, the hearing shall be held no later than fourteen days following the date of request unless a later date is agreed to by the deputy sheriff. At the hearing, the deputy sheriff and his department shall be allowed to present evidence and to examine and cross-examine witnesses.

B. The hearing shall be conducted by a panel; ~~the panel shall~~ consisting of: one member selected by the deputy sheriff; one member selected by the sheriff; and a third member selected by the other two members. In the event that such two members cannot agree upon a third member, the chief judge of the appropriate circuit court shall choose the third member. The panel shall have the power to, and on the request of either the deputy sheriff or his department shall, issue subpoenas requiring the testimony of witnesses who have refused or failed to appear at the hearing. The panel shall rule on the admissibility of all evidence to be presented to the hearing.

§ 2.1-116.9:10. Decision of the panel.

The decision of the panel, and the reasons thereof, shall be in writing and shall be transmitted promptly to the deputy sheriff and to the sheriff. This decision shall not be binding on the parties but shall be given due consideration by the sheriff with respect to the pending charges.

§ 2.1-116.9:11. Chapter affords minimum rights.

The rights accorded deputy sheriffs under this chapter are minimum rights and all sheriffs' departments shall promulgate grievance procedures not inconsistent herewith. Any such department may provide additional procedural guarantees.

INTRODUCED

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60 § 2.1-116.9:12. *Immediate suspension.*

61 *Nothing in this chapter shall prevent the immediate suspension without pay of any deputy sheriff*
62 *whose continued presence on the job is deemed to be a substantial and immediate threat to the welfare*
63 *of his department or the public, nor shall anything in this chapter prevent the suspension of a deputy*
64 *sheriff for refusing to obey a direct order issued in conformance with the department's written and*
65 *disseminated rules and regulations. In such a case, the deputy sheriff shall, upon request, be afforded*
66 *the rights provided for under this chapter within a reasonable amount of time set by the department.*

67 § 2.1-116.9:13. *Exclusions from provision of chapter.*

68 *Any disciplinary action resulting from the conviction of a deputy sheriff of a felony or a Class 1 or*
69 *Class 2 misdemeanor shall be exempt from the provisions of this chapter. Additionally, the provisions of*
70 *this chapter shall only apply to deputies appointed pursuant to § 15.1-48 by a sheriff after entering*
71 *upon the duties of his office.*