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HOUSE BILL NO. 2252

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Williams)

A BILL to amend and reenact §§ 19.2-34 through 19.2-38, 19.2-43, 19.2-44, 19.2-45, 19.2-46, 19.2-46.1, and 19.2-48.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-35.1, relating to magistrates; appointment and supervision.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-34 through 19.2-38, 19.2-43, 19.2-44, 19.2-45, 19.2-46, 19.2-46.1, and 19.2-48.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-35.1 as follows:

§ 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. ~~The positions of all employees of the magistrate system~~ number of magistrates and any other necessary personnel in the office of the magistrates shall be authorized by the ~~Committee on District Courts established pursuant to § 16.1-69.33~~ Executive Secretary of the Supreme Court of Virginia.

§ 19.2-35. Appointment; supervision generally.

~~Magistrates and any other personnel in the office of the magistrate~~ shall be appointed by the ~~Executive Secretary of the Supreme Court of Virginia in consultation with the chief judges~~ judge of the ~~circuit courts~~ court having jurisdiction within the ~~region~~ district, in consultation with both the chief general district court judge and the chief juvenile and domestic relations district court judge of that district. Each magistrate shall be appointed to serve ~~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 Executive Secretary~~ the entire judicial district for which the appointment is made. The chief judge of the circuit court

27 shall have full supervisory authority over the magistrates so appointed but may delegate this authority to
28 the chief judge of the general district court pursuant to § 19.2-35.1. Notwithstanding any other provision
29 of law, the only methods for the selection of magistrates shall be as set out in this section.

30 The chief judge of the circuit court, in consultation with both the chief judge of the general district
31 court and the chief judge of the juvenile and domestic relations district court of that district, may also
32 appoint as many substitute magistrates as may be authorized by the Executive Secretary. The order of
33 appointment of such substitute magistrate shall specify the period such substitute magistrate shall serve,
34 and during this period such substitute magistrate shall exercise all the powers enumerated in § 19.2-45 in
35 the judicial district for which the appointment is made.

36 If a magistrate of any district is absent or unable through sickness or other disability to perform
37 his duties, the chief magistrate of that district may call upon any off-duty magistrate of an adjoining district
38 to serve in a replacement capacity. When so designated, the replacement magistrate shall have all the
39 authority and power of a magistrate of that district.

40 No person shall be appointed under this section until he has submitted his fingerprints to be used
41 for the conduct of a national criminal records search and a Virginia criminal history records search. No
42 person with a criminal conviction for a felony shall be appointed as a magistrate.

43 **§ 19.2-35.1. Chief circuit court judge; delegation of general supervisory power to chief**
44 **general district court judge.**

45 The chief circuit court judge of the judicial district may delegate his authority under § 19.2-35 to
46 the chief judge of the general district court.

47 **§ 19.2-36. Chief magistrates.**

48 A. ~~The Executive Secretary of the Supreme Court of Virginia~~ chief circuit court judge, in
49 consultation with both the chief general district court judge and the chief juvenile and domestic relations
50 district court judge of that district, may appoint a chief-magistrates, magistrate for the purpose of managing
51 the magistrate's office within his judicial district, including hiring and firing of other necessary personnel,
52 maintaining the proper schedules, assisting in the training of the magistrates and any other necessary
53 personnel, and being responsible to the Executive Secretary for the conduct of the magistrates-and-to

54 further assist the Office of the Executive Secretary in the operation of one or more of the magisterial
55 regions. The chief magistrate shall exercise direct daily supervision over the magistrates he supervises and
56 shall have the power to suspend without pay a magistrate after consultation and with the concurrence of
57 the Executive Secretary.

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

64 C. The chief magistrate, with the approval of the chief circuit court judge, may employ the services
65 of an administrative assistant or other personnel to assist with the operation of videoconferencing
66 equipment used to provide remote access to the magistrates he supervises. The chief magistrate shall
67 exercise direct daily supervision over such administrative assistant or other personnel employed pursuant
68 to this subsection.

69 **§ 19.2-37. Magistrates; eligibility for appointment; restrictions on activities.**

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

73 B. Every person appointed as a magistrate on and after July 1, 2008, shall be required to have a
74 bachelor's degree from an accredited institution of higher education. A person initially appointed as a
75 magistrate prior to July 1, 2008, who continues in office without a break in service is not required to have
76 a bachelor's degree from an accredited institution of higher education.

77 C. A person shall not be eligible for appointment as a magistrate under the provisions of this title:
78 ~~(a)~~ (i) if such person is a law-enforcement officer; ~~(b)~~ (ii) if such person or his spouse is a clerk, deputy
79 or assistant clerk, or employee of any such clerk of a district or circuit court, provided that the Committee
80 on District Courts may authorize a magistrate to assist in the district court clerk's office on a part-time

81 basis; ~~(e)~~ (iii) if the parent, child, spouse, or sibling of such person is a district or circuit court judge in the
82 ~~magisterial region~~ judicial district where he will serve; or ~~(d)~~ (iv) if such person is the chief executive
83 officer, or a member of the board of supervisors, town or city council, or other governing body for any
84 political subdivision of the Commonwealth.

85 D. No magistrate shall issue any warrant or process in complaint of his spouse, child, grandchild,
86 parent, grandparent, parent-in-law, child-in-law, brother, sister, brother-in-law or sister-in-law, nephew,
87 niece, uncle, aunt, first cousin, guardian, or ward.

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

91 F. No person appointed as a magistrate on or after July 1, 2008, may engage in the practice of law.

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

94 **§ 19.2-38. Probationary period; compensation and benefits; vacancies; revocation of**
95 **appointment.**

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

108 § 19.2-43. Duty of Executive Secretary of Supreme Court.

109 It shall be the duty of the Executive Secretary of the Supreme Court to ~~exercise general supervisory~~
110 ~~power over~~ assist the chief judge of the circuit court, or the chief judge of the general district court when
111 delegated the authority by the chief judge of the circuit court, and the chief magistrate of each judicial
112 district in the administration of magistrates and adopt such policies as are deemed necessary to supplement
113 or clarify the provisions of this chapter with respect to such magistrates, to include fixing the time and
114 place such magistrates shall serve. The Executive Secretary shall conduct training sessions and meetings
115 for magistrates and provide information and materials for their use. He may appoint one or more
116 magistrates to assist him and, in addition, require annual reports to be filed by the magistrates on their
117 work as such, fees associated therewith and other information pertinent to their office, on forms to be
118 furnished by him. The Executive Secretary may appoint and employ such personnel as are needed to
119 ~~manage the magistrate system and~~ carry out the duties and responsibilities conferred upon the Executive
120 Secretary by this chapter.

121 § 19.2-44. Territorial jurisdiction.

122 A magistrate shall be authorized to exercise the powers conferred on magistrates by this title only
123 ~~in the magisterial region or regions~~ judicial district for which he is appointed, except that a magistrate may
124 issue search warrants in accordance with the provisions of Chapter 5 (§ 19.2-52 et seq.) throughout the
125 Commonwealth. A magistrate may exercise all powers conferred on magistrates by this title throughout
126 the Commonwealth when so authorized by the Executive Secretary upon a determination that such
127 assistance is necessary.

128 § 19.2-45. Powers enumerated.

129 A magistrate shall have the following powers only:

130 ~~(1)~~ 1. To issue process of arrest in accord with the provisions of §§ 19.2-71 ~~to through~~ 19.2-82 ~~of~~
131 ~~the Code;~~

132 ~~(2)~~ 2. To issue search warrants in accord with the provisions of §§ 19.2-52 ~~to through~~ 19.2-60 ~~of~~
133 ~~the Code;~~

134 ~~(3)~~3. To admit to bail or commit to jail all persons charged with offenses subject to the limitations
135 of and in accord with general laws on bail;

136 ~~(4)~~4. The same power to issue warrants and subpoenas within such city or county as is conferred
137 upon district courts and as limited by the provisions of §§ 19.2-71 through 19.2-82. A copy of all felony
138 warrants issued at the request of a citizen shall be promptly delivered to the attorney for the
139 Commonwealth for the county or city in which the warrant is returnable. Upon the request of the attorney
140 for the Commonwealth, a copy of any misdemeanor warrant issued at the request of a citizen shall be
141 delivered to the attorney for the Commonwealth for such county or city. All attachments, warrants and
142 subpoenas shall be returnable before a district court;

143 ~~(5)~~5. To issue civil warrants directed to the sheriff or constable of the county or city wherein the
144 defendant resides, together with a copy thereof, requiring him to summon the person against whom the
145 claim is, to appear before a district court on a certain day, not exceeding 30 days from the date thereof to
146 answer such claim. If there be two or more defendants and any defendant resides outside the jurisdiction
147 in which the warrant is issued, the summons for such defendant residing outside the jurisdiction may be
148 directed to the sheriff of the county or city of his residence, and such warrant may be served and returned
149 as provided in § 16.1-80;

150 ~~(6)~~6. To administer oaths and take acknowledgments;

151 ~~(7)~~7. To act as conservators of the peace; and

152 ~~(8), (9)~~ [Repealed.]

153 ~~(10)~~8. To perform such other acts or functions specifically authorized by law.

154 **§ 19.2-46. Compensation.**

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

157 Each substitute magistrate shall receive for his services a per diem compensation as may be
158 established by the Executive Secretary.

159 **§ 19.2-46.1. Salaries to be fixed by the Executive Secretary; limitations; mileage allowance.**

160 Salaries of magistrates and any other personnel in the office of the magistrate shall be fixed by the
161 Executive Secretary of the Supreme Court. Such salaries shall be fixed by the Executive Secretary at least
162 annually at such time as he deems proper and as soon as practicable thereafter certified to the Comptroller.

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

165 In determining the salary of any magistrate, the Executive Secretary shall consider the ~~work load~~
166 workload of and territory and population served by the magistrate and such other factors he deems
167 relevant. The Executive Secretary may require of any magistrate or district court judge information on the
168 operation of the office of the magistrate.

169 The governing body of any county or city may add to the fixed compensation of magistrates such
170 amount as the governing body may appropriate with the total amount not to exceed 50 percent of the
171 amount paid by the Commonwealth to magistrates, provided such additional compensation was in effect
172 on June 30, 2008, for such magistrates and any magistrate receiving such additional compensation
173 continues in office without a break in service. However, the total amount of additional compensation may
174 not be increased after June 30, 2008. No additional amount paid by a local governing body shall be
175 chargeable to the Executive Secretary of the Supreme Court, nor shall it remove or supersede any
176 authority, control, or supervision of the Executive Secretary or Committee on District Courts.

177 **§ 19.2-48.1. Quarters for magistrates.**

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

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

189 C. If a judicial district utilizes videoconferencing equipment to provide remote access to
190 magistrates appointed pursuant to Article 3 (§ 19.2-33 et seq.), an administrative assistant or other
191 personnel may be employed pursuant to § 19.2-36 to assist with the operation of such videoconferencing
192 equipment.

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