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CLIVE WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002



# ENROLLED

COMMITTEE SUBSTITUTE  
FOR

## House Bill No. 4115

(By Mr. Speaker, Mr. Kiss, and Delegates Varner,  
Stemple, Michael, Kominar, Cann and Amores)



Passed March 5, 2002

In Effect from Passage

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FOR

## H. B. 4115

(BY MR. SPEAKER, MR. KISS, AND DELEGATES VARNER,  
STEMPLE, MICHAEL, KOMINAR, CANN AND AMORES)

[Passed March 5, 2002; in effect from passage.]

AN ACT to amend and reenact section nine, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nine, article ten, chapter sixty-two of said code, all relating to providing that correctional officers at state facilities and regional jails have authority to execute warrants on persons in their custody; and authorizing correctional officers to apply for fugitive from justice warrants when they have reasonable grounds to believe persons in their custody are charged with crimes in other states.

*Be it enacted by the Legislature of West Virginia:*

That section nine, article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section nine, article ten, chapter

sixty-two of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY  
OF THE GOVERNOR, SECRETARY OF STATE AND  
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;  
MISCELLANEOUS AGENCIES, COMMISSIONS,  
OFFICES, PROGRAMS, ETC.**

**ARTICLE 1. THE GOVERNOR.**

**§5-1-9. Hearing after arrest; application for writ of habeas  
corpus; arrest and confinement of fugitives from  
another state; bail; persons involved in criminal or  
civil actions in this state.**

1 (a) No person arrested upon a warrant shall be delivered  
2 over to the agent whom the executive authority demanding him  
3 or her shall have appointed to receive him or her unless he or  
4 she shall first be taken forthwith before a judge of a court of  
5 record in this state, who shall inform him or her of the demand  
6 made for his or her surrender and of the crime with which he or  
7 she is charged, and that he or she has the right to demand and  
8 procure legal counsel and if the prisoner or his or her counsel  
9 shall state that he or they desire to test the legality of his or her  
10 arrest, the judge of the court of record shall fix a reasonable  
11 time to be allowed him or her within which to apply for a writ  
12 of habeas corpus. When a writ is applied for, notice thereof, and  
13 of the time and place of hearing thereon, shall be given to the  
14 prosecuting attorney of the county in which the arrest is made  
15 and in which the accused is in custody, and to the agent of the  
16 demanding state.

17 (b) Any officer who delivers to the agent for extradition of  
18 the demanding state a person in his or her custody under the  
19 governor's warrant, in willful disobedience to subdivision (a)  
20 of this section, shall be guilty of a misdemeanor and, on

21 conviction thereof shall be fined not more than one thousand  
22 dollars or be imprisoned not more than six months, or both.

23 (c) The officer or persons executing the governor's warrant  
24 of arrest, or the agent of the demanding state to whom the  
25 prisoner may have been delivered, may, when necessary,  
26 confine the prisoner in any city, county or regional jail; and the  
27 keeper of the jail shall receive and safely keep the prisoner until  
28 the officer or person having charge of him or her is ready to  
29 proceed on his or her route, the officer or person being charge-  
30 able with the expense of keeping.

31 The officer or agent of a demanding state to whom a  
32 prisoner may have been delivered following extradition  
33 proceedings in another state, or to whom a prisoner may have  
34 been delivered after waiving extradition in the other state, and  
35 who is passing through this state with such a prisoner for the  
36 purpose of immediately returning the prisoner to the demanding  
37 state may, when necessary, confine the prisoner in any city,  
38 county or regional jail; and the keeper of the jail shall receive  
39 and safely keep the prisoner until the officer or agent having  
40 charge of him or her is ready to proceed on his or her route, the  
41 officer or agent, however, being chargeable with the expense of  
42 keeping: *Provided*, That the officer or agent shall produce and  
43 show to the keeper of the jail satisfactory written evidence of  
44 the fact that he or she is actually transporting a prisoner to the  
45 demanding state after a requisition by the executive authority of  
46 the demanding state. The prisoner may not be entitled to  
47 demand a new requisition while in this state.

48 (d) Whenever any person within this state shall be charged  
49 on the oath of any credible person before any judge or magis-  
50 trate of this state with the commission of any crime in any other  
51 state and, except in cases arising under subdivision (g), section  
52 seven of this article, with having fled from justice, or with  
53 having been convicted of a crime in that state and having

54 escaped from confinement, or having broken the terms of his or  
55 her bail, probation or parole, or whenever complaint has been  
56 made before any judge or magistrate in this state setting forth  
57 on the affidavit of any credible person in another state that a  
58 crime has been committed in the state and that the accused has  
59 been charged in the state with the commission of the crime,  
60 and, except in cases arising under subdivision (g), section seven  
61 of this article, has fled from justice, or with having been  
62 convicted of a crime in that state and having escaped from  
63 confinement, or having broken the terms of his or her bail,  
64 probation or parole, and is believed to be in this state, the judge  
65 or magistrate shall issue a warrant directed to any peace officer  
66 commanding him or her to apprehend the person named therein,  
67 wherever he or she may be found in this state, and to bring him  
68 or her before the same or any other judge, magistrate, or court  
69 who or which may be available in or convenient of access to the  
70 place where the arrest may be made, to answer the charge or  
71 complaint and affidavit, and a certified copy of the sworn  
72 charge or complaint and affidavit upon which the warrant is  
73 issued shall be attached to the warrant.

74 (e) The arrest of a person may be lawfully made also by any  
75 peace officer, or a private person, without a warrant, upon  
76 reasonable information that the accused stands charged in the  
77 courts of a state with a crime punishable by death or by  
78 imprisonment for a term exceeding one year, but when so  
79 arrested the accused must be taken before a judge or magistrate  
80 with all practicable speed and complaint must be made against  
81 him or her under oath setting forth the ground for the arrest as  
82 in the preceding section and thereafter his or her answer shall  
83 be heard as if he or she had been arrested on a warrant. Correc-  
84 tional officers may, additionally, make complaint against  
85 persons in their custody for whom they have a reasonable belief  
86 stand accused of crimes, punishable by death or confinement  
87 for a term exceeding one year, in the courts of another state.

88 (f) If from the examination before the judge or magistrate  
89 it appears that the person held is the person charged with having  
90 committed the crime alleged and, except in cases arising under  
91 subdivision (g), section seven of this article, that he or she has  
92 fled from justice, the judge or magistrate must, by a warrant  
93 reciting the accusation, commit him or her to the county or  
94 regional jail for a time not exceeding thirty days, and specified  
95 in the warrant, as will enable the arrest of the accused to be  
96 made under a warrant of the governor on a requisition of the  
97 executive authority of the state having jurisdiction of the  
98 offense, unless the accused give bail as provided in subdivision  
99 (g) of this section, or until he or she shall be legally discharged.

100 (g) Unless the offense with which the prisoner is charged is  
101 shown to be an offense punishable by death or life imprison-  
102 ment under the laws of the state in which it was committed, a  
103 judge or magistrate in this state may admit the person arrested  
104 to bail by bond, with sufficient sureties, and in a sum as he or  
105 she considers proper, conditioned for his or her appearance  
106 before him or her at a time specified in the bond, and for his or  
107 her surrender, to be arrested upon the warrant of the governor  
108 of this state.

109 (h) If the accused is not arrested under warrant of the  
110 governor by the expiration of the time specified in the warrant  
111 or bond, a judge or magistrate may discharge him or her or may  
112 recommit him or her for a further period not to exceed sixty  
113 days, or a judge or magistrate may again take bail for his or her  
114 appearance and surrender as provided in subdivision (g) of this  
115 section, but within a period not to exceed sixty days after the  
116 date of the new bond.

117 (i) If the prisoner is admitted to bail, and fails to appear and  
118 surrender himself or herself according to the conditions of his  
119 or her bond, the judge, or magistrate, by proper order, shall  
120 declare the bond forfeited and order his or her immediate arrest

121 without warrant if he or she is within this state. Recovery may  
122 be had on a bond in the name of the state as in the case of other  
123 bonds given by the accused in criminal proceedings within this  
124 state.

125 (j) If a criminal prosecution has been instituted against the  
126 person under the laws of this state and is still pending, the  
127 governor, in his or her discretion, either may surrender him or  
128 her on demand of the executive authority of another state or  
129 hold him or her until he or she has been tried and discharged or  
130 convicted and punished in this state: *Provided*, That any person  
131 under recognizance to appear as a witness in any criminal  
132 proceeding pending in this state may in the discretion of the  
133 governor be surrendered on demand of the executive authority  
134 of another state or be held until criminal proceeding pending in  
135 this state has been determined: *Provided however*, That any  
136 person who was in custody upon any execution, or upon process  
137 in any suit, at the time of being apprehended for a crime  
138 charged to have been committed without the jurisdiction of this  
139 state, may not be delivered up without the consent of the  
140 plaintiff in an execution or suit, until the amount of the execu-  
141 tion has been paid, or until the person shall be otherwise  
142 discharged from the execution or process.

143 (k) The guilt or innocence of the accused as to the crime for  
144 which he or she is charged may not be inquired into by the  
145 governor or in any proceeding after the demand for extradition  
146 accompanied by a charge of crime in legal form as provided in  
147 this article has been presented to the governor, except as it may  
148 be involved in identifying the person held as the person charged  
149 with the crime.

## **CHAPTER 62. CRIMINAL PROCEDURE.**

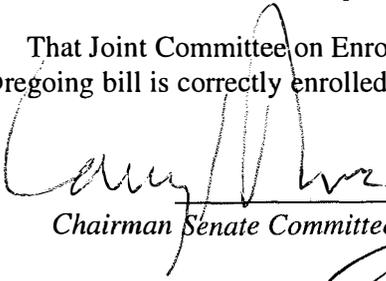
### **ARTICLE 10. PREVENTION OF CRIME.**

**§62-10-9. Power and authority of sheriffs, deputy sheriffs and correctional officers to make arrests.**

1        Sheriffs and each of their deputies are hereby authorized  
2 and empowered within their respective counties to make arrests  
3 for any crime for which a warrant has been issued in violation  
4 of any laws of the United States or of this state, and to make  
5 arrests without warrant for all violations of any of the criminal  
6 laws of the United States, or of this state, when committed in  
7 their presence. A correctional officer may execute a warrant,  
8 issued for the arrest of a person, only when the person named  
9 in the warrant is already in the custody of the officer or when  
10 the person voluntarily surrenders to the correctional officer at  
11 the county or regional jail or a state correctional facility at  
12 which the correctional officer is employed.

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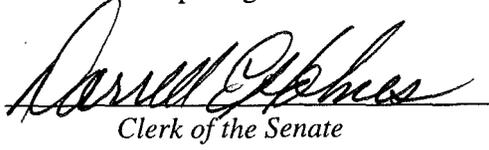
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

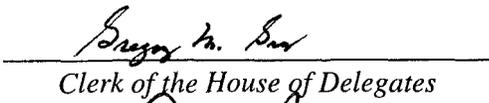
  
Chairman Senate Committee

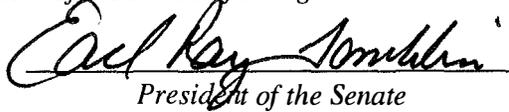
  
Chairman House Committee

Originating in the House.

In effect from passage.

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 13<sup>th</sup>  
day of March, 2002.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/7/02

Time 9:50am