WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2002

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ENROLLED

COMMITTEE SUBSTITUTE FOR
House Bill No. 4115

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

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Passed March 5, 2002

In Effect from Passage
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COMMITTEE SUBSTITUTE

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.

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

(b) Any officer who delivers to the agent for extradition of the demanding state a person in his or her custody under the governor’s warrant, in willful disobedience to subdivision (a) of this section, shall be guilty of a misdemeanor and, on
conviction thereof shall be fined not more than one thousand
dollars or be imprisoned not more than six months, or both.

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

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

(d) Whenever any person within this state shall be charged
on the oath of any credible person before any judge or magis-
trate of this state with the commission of any crime in any other
state and, except in cases arising under subdivision (g), section
seven of this article, with having fled from justice, or with
having been convicted of a crime in that state and having
escaped from confinement, or having broken the terms of his or her bail, probation or parole, or whenever complaint has been made before any judge or magistrate in this state setting forth on the affidavit of any credible person in another state that a crime has been committed in the state and that the accused has been charged in the state with the commission of the crime, and, except in cases arising under subdivision (g), section seven of this article, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his or her bail, probation or parole, and is believed to be in this state, the judge or magistrate shall issue a warrant directed to any peace officer commanding him or her to apprehend the person named therein, wherever he or she may be found in this state, and to bring him or her before the same or any other judge, magistrate, or court who or which may be available in or convenient of access to the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

(e) The arrest of a person may be lawfully made also by any peace officer, or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or by imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him or her under oath setting forth the ground for the arrest as in the preceding section and thereafter his or her answer shall be heard as if he or she had been arrested on a warrant. Correctional officers may, additionally, make complaint against persons in their custody for whom they have a reasonable belief stand accused of crimes, punishable by death or confinement for a term exceeding one year, in the courts of another state.
(f) If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under subdivision (g), section seven of this article, that he or she has fled from justice, the judge or magistrate must, by a warrant reciting the accusation, commit him or her to the county or regional jail for a time not exceeding thirty days, and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in subdivision (g) of this section, or until he or she shall be legally discharged.

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

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

(i) If the prisoner is admitted to bail, and fails to appear and surrender himself or herself according to the conditions of his or her bond, the judge, or magistrate, by proper order, shall declare the bond forfeited and order his or her immediate arrest
without warrant if he or she is within this state. Recovery may be had on a bond in the name of the state as in the case of other bonds given by the accused in criminal proceedings within this state.

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

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

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 10. PREVENTION OF CRIME.

Sheriffs and each of their deputies are hereby authorized and empowered within their respective counties to make arrests for any crime for which a warrant has been issued in violation of any laws of the United States or of this state, and to make arrests without warrant for all violations of any of the criminal laws of the United States, or of this state, when committed in their presence. A correctional officer may execute a warrant, issued for the arrest of a person, only when the person named in the warrant is already in the custody of the officer or when the person voluntarily surrenders to the correctional officer at the county or regional jail or a state correctional facility at which the correctional officer is employed.
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 13th day of March, 2002.

Governor
PRESENTED TO THE
GOVERNOR

Date: 3/1/02
Time: 9:30 AM