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SENATE BILL NO. 291

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 25, 2022)

(Patron Prior to Substitute—Senator Deeds)

A BILL to amend and reenact § 8.01-293 of the Code of Virginia, relating to service of process; investigator employed by an attorney for the Commonwealth or Indigent Defense Commission.

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-293 of the Code of Virginia is amended and reenacted as follows:

§ 8.01-293. Authorization to serve process, capias or show cause order; execute writ of possession or eviction and levy upon property.

A. The following persons are authorized to serve process:

1. The sheriff within such territorial bounds as described in § 8.01-295;

2. Any person of age 18 years of age or older and who is not a party or otherwise interested in the subject matter in controversy. For purposes of this subdivision, an investigator employed by an attorney for the Commonwealth or employed by the Indigent Defense Commission, who within 10 years immediately prior to being employed by the attorney for the Commonwealth or Indigent Defense Commission was an active law-enforcement officer as defined in § 9.1-101 in the Commonwealth and retired or resigned from his position as a law-enforcement officer in good standing, shall not be considered to be a party or otherwise interested in the subject matter in controversy while engaged in the performance of his official duties when serving witness subpoenas. For purposes of this subdivision, an investigator employed by an attorney for the Commonwealth shall not be considered to be a party or otherwise interested in the subject matter in controversy while engaged in the performance of his official duties, provided that the sheriff in the jurisdiction where process is to be served has agreed that such investigators investigator may serve process. If a sheriff has agreed that such investigators investigator may serve process, then investigators an investigator employed by either an attorney for the Commonwealth or the Indigent Defense Commission may serve process. However, in any case in which custody or visitation of a minor child or children is at issue and a summons is issued for the attendance and testimony of a teacher or other school personnel who is not a party to the proceeding, if such summons is served on school property, it shall be served only by a sheriff or his deputy; or

3. A private process server. For purposes of this section, "private process server" means any person 18 years of age or older and who is not a party or otherwise interested in the subject matter in controversy, and who charges a fee for service of process.

Whenever in this Code the term "officer" or "sheriff" is used to refer to persons authorized to make, return, or do any other act relating to service of process, such term shall be deemed to refer to any person authorized by this section to serve process.

B. Notwithstanding any other provision of law (i) only a sheriff or high constable may execute an order or writ of possession for personal, real, or mixed property, including a writ of eviction arising out of an action in unlawful entry and detainer or ejectment; (ii) any sheriff, high constable, or law-enforcement officer as defined in § 9.1-101 of the Code of Virginia may serve any capias or show cause order; and (iii) only a sheriff, the high constable for the City of Norfolk or Virginia Beach, or a treasurer may levy upon property.