

1 HOUSE BILL NO. 520
2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
3 (Proposed by the House Committee for Courts of Justice
4 on _____)
5 (Patron Prior to Substitute--Delegate Hope)

6 A BILL to amend and reenact §§ 2.2-311, 19.2-73, 19.2-74, 19.2-128, 19.2-390, 28.2-901, 29.1-210, 54.1-
7 306, 54.1-2506, and 54.1-4407 of the Code of Virginia, relating to promise to appear after the
8 issuance of a summons; issuance of summons instead of warrant in certain cases; nonviolent
9 felonies.

10 **Be it enacted by the General Assembly of Virginia:**

11 **1. That §§ 2.2-311, 19.2-73, 19.2-74, 19.2-128, 19.2-390, 28.2-901, 29.1-210, 54.1-306, 54.1-2506, and**
12 **54.1-4407 of the Code of Virginia are amended and reenacted as follows:**

13 **§ 2.2-311. Enforcement of laws by the State Inspector General or investigators; police power**
14 **of the Office of State Inspector General; training.**

15 A. The State Inspector General may designate himself and no more than 30 members of the
16 investigations unit of the Office to have the same powers as a sheriff or a law-enforcement officer in the
17 investigation of allegations of criminal behavior affecting the operations of a state agency or nonstate
18 agency pursuant to his duties as set forth in this chapter. Such employees shall be subject to any minimum
19 training standards established by the Department of Criminal Justice Services under § 9.1-102 for law-
20 enforcement officers prior to exercising any law-enforcement power under this subsection.

21 The State Inspector General and the Superintendent of the Virginia State Police shall enter into a
22 Memorandum of Understanding setting forth the respective roles and responsibilities of their agencies,
23 including but not limited to the categories of investigations that will be overseen by each agency and how
24 to avoid redundancy or operation conflicts. The Memorandum of Understanding will be approved by the
25 Governor's chief of staff and will be reviewed periodically at the request of either agency, but not less

26 than every four years, and revised as agreed to by the agencies and endorsed by the Governor's chief of
27 staff.

28 B. The State Inspector General or investigators as may be designated by him also shall have the
29 authority to issue summonses for violations of the statutes that the State Inspector General is required to
30 enforce. In the event that a person issued such a summons fails or refuses to discontinue the unlawful acts
31 ~~or refuses to give a written promise to appear at the time and place specified in the summons,~~ the
32 investigator may appear before a magistrate or other issuing authority having jurisdiction to obtain a
33 criminal warrant pursuant to § 19.2-72. If any person refuses to give a written promise to appear for a
34 summons issued under the provisions of this section, the State Inspector General or an investigator
35 designated by him shall give such person notice of the time and place of the hearing, note such person's
36 refusal to give his written promise to appear on the summons, and forthwith release him from custody.

37 Any person who willfully violates his written promise to appear or fails to appear at the time and
38 place specified in such summons or notice issued in accordance with this subsection shall be treated in
39 accordance with the provisions of § 19.2-128, regardless of the disposition of, and in addition to, the
40 charge upon which he was originally arrested.

41 C. All investigators appointed by the State Inspector General are vested with the authority to
42 administer oaths or affirmations for the purpose of receiving complaints and conducting investigations of
43 violations of the statutes and regulations that the State Inspector General is required to enforce. Such
44 investigators are vested with the authority to obtain, serve, and execute any warrant, paper, or process
45 issued by any court or magistrate or under the authority of the State Inspector General, and request and
46 receive criminal history information under the provisions of § 19.2-389.

47 **§ 19.2-73. Issuance of summons instead of warrant in certain cases.**

48 A. In any misdemeanor case or in any class of misdemeanor cases, or in any case involving
49 complaints made by any state or local governmental official or employee having responsibility for the
50 enforcement of any statute, ordinance or administrative regulation, the magistrate or other issuing
51 authority having jurisdiction may issue a summons instead of a warrant when there is reason to believe
52 that the person charged will appear in the courts having jurisdiction over the trial of the offense charged.

53 B. If any person under suspicion for driving while intoxicated has been taken to a medical facility
54 for treatment or evaluation of his medical condition, the officer at the medical facility may issue, on the
55 premises of the medical facility, a summons for a violation of § 18.2-266, 18.2-266.1, 18.2-272, or 46.2-
56 341.24 and for refusal of tests in violation of subsection A or B of § 18.2-268.3 or subsection A of § 46.2-
57 341.26:3, in lieu of securing a warrant and without having to detain that person, provided that the officer
58 has probable cause to place him under arrest. The issuance of such summons shall be deemed an arrest for
59 purposes of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2.

60 C. A law-enforcement officer, at his discretion, may issue a summons instead of a warrant for a
61 felony offense not included in subsection C of § 17.1-805 if (i) in the judgment of the officer, the person
62 charged will cease committing the illegal act; (ii) in the judgement of the officer, the person charged does
63 not pose an immediate threat to public safety; and (iii) the person charged signs a written promise to appear
64 at the time and place of the hearing. No law-enforcement agency shall create a policy that requires or
65 prohibits release for persons meeting the provisions of this subsection.

66 D. Any person on whom such summons is served shall appear on the date set forth in same, and if
67 such person fails to appear in such court at such time and on such date then he shall be treated in
68 accordance with the provisions of § 19.2-128, regardless of the disposition of, and in addition to, the
69 charge upon which he was originally arrested.

70 **§ 19.2-74. Issuance and service of summons in place of warrant in misdemeanor case;**
71 **issuance of summons by special conservators of the peace.**

72 A. 1. Whenever any person is detained by or is in the custody of an arresting officer for any
73 violation committed in such officer's presence which offense is a violation of any county, city or town
74 ordinance or of any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other
75 misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title 46.2, or for
76 offenses listed in subsection D of § 19.2-81, or an arrest on a warrant charging an offense for which a
77 summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the
78 arresting officer shall take the name and address of such person and issue a summons or otherwise notify
79 him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving

80 by such person of his written promise to appear at such time and place, the officer shall forthwith release
81 him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the
82 officer may proceed according to the provisions of § 19.2-82.

83 Anything in this section to the contrary notwithstanding, if any person is believed by the arresting
84 officer to be likely to disregard a summons issued under the provisions of this subsection, or if any person
85 is reasonably believed by the arresting officer to be likely to cause harm to himself or to any other person,
86 a magistrate or other issuing authority having jurisdiction shall proceed according to the provisions of §
87 19.2-82.

88 2. Whenever any person is detained by or is in the custody of an arresting officer for a violation of
89 any county, city, or town ordinance or of any provision of this Code, punishable as a Class 3 or Class 4
90 misdemeanor or any other misdemeanor for which he cannot receive a jail sentence, except as otherwise
91 provided in Title 46.2, or to the offense of public drunkenness as defined in § 18.2-388, the arresting
92 officer shall take the name and address of such person and issue a summons or otherwise notify him in
93 writing to appear at a time and place to be specified in such summons or notice. Upon the giving of such
94 person of his written promise to appear at such time and place, the officer shall forthwith release him from
95 custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may
96 proceed according to the provisions of § 19.2-82.

97 3. Unless otherwise authorized by law, any person so summoned shall not be held in custody after
98 the issuance of such summons for the purpose of complying with the requirements of Chapter 23 (§ 19.2-
99 387 et seq.). Reports to the Central Criminal Records Exchange concerning such persons shall be made
100 pursuant to subdivision A 2 of § 19.2-390 and subsection C of § 19.2-390.

101 ~~Any~~ If any person refusing refuses to give such written promise to appear under the provisions of
102 this section ~~shall be taken immediately by the arresting or other police officer before a magistrate or other~~
103 ~~issuing authority having jurisdiction, who shall proceed according to provisions of § 19.2-82,~~ the arresting
104 officer shall give such person notice of the time and place of the hearing, note such person's refusal to give
105 his written promise to appear on the summons, and forthwith release him from custody.

106 Any person who willfully violates his written promise to appear, ~~given~~ or fails to appear at the
107 time and place specified in such summons or notice issued in accordance with this section, shall be treated
108 in accordance with the provisions of § 19.2-128, regardless of the disposition of, and in addition to, the
109 charge upon which he was originally arrested.

110 Any person charged with committing any violation of § 18.2-407 may be arrested and immediately
111 brought before a magistrate who shall proceed as provided in § 19.2-82.

112 B. Conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) may issue summonses
113 pursuant to this section, if such officers are in uniform or displaying a badge of office. On application, the
114 chief law-enforcement officer of the county or city shall supply each officer with a supply of summons
115 forms, for which such officer shall account pursuant to regulation of such chief law-enforcement officer.

116 C. The summons used by a law-enforcement officer pursuant to this section shall be in form the
117 same as the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388. If
118 the summons is issued for an offense in violation of any county, city, or town ordinance that is similar to
119 any provision of this Code, the summons shall reference the offense using both the citation corresponding
120 to the county, city, or town ordinance and the specific provision of this Code.

121 **§ 19.2-128. Penalties for failure to appear.**

122 A. Whoever, having been released pursuant to this chapter or § 19.2-319 or on a summons pursuant
123 to § 2.2-311, 19.2-73, or § 19.2-74, willfully fails to appear before any court or judicial officer as required,
124 shall, after notice to all interested parties, incur a forfeiture of any security which may have been given or
125 pledged for his release, unless one of the parties can show good cause for excusing the absence, or unless
126 the court, in its sound discretion, shall determine that neither the interests of justice nor the power of the
127 court to conduct orderly proceedings will be served by such forfeiture.

128 B. Any person (i) charged with a felony offense or (ii) convicted of a felony offense and execution
129 of sentence is suspended pursuant to § 19.2-319 who willfully fails to appear before any court as required
130 shall be guilty of a Class 6 felony.

131 C. Any person (i) charged with a misdemeanor offense or (ii) convicted of a misdemeanor offense
132 and execution of sentence is suspended pursuant to § 19.2-319 who willfully fails to appear before any
133 court as required shall be guilty of a Class 1 misdemeanor.

134 **§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace,**
135 **clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material**
136 **submitted by other agencies.**

137 A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police
138 officials of cities and towns, and any other local law-enforcement officer or conservator of the peace
139 having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on
140 forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service
141 of process upon, any person on charges resulting from an indictment, presentment or information, the
142 arrest on *capias* or warrant for failure to appear, and the service of a warrant for another jurisdiction, for
143 each charge when any person is arrested on any of the following charges:

144 a. Treason;

145 b. Any felony;

146 c. Any offense punishable as a misdemeanor under Title 54.1;

147 d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, or any similar
148 ordinance of any county, city or town, (ii) under § 20-61, or (iii) under § 16.1-253.2; or

149 e. Any offense in violation of § 3.2-6570, 4.1-309.1, 5.1-13, 15.2-1612, 22.1-289.041, 46.2-339,
150 46.2-341.21, 46.2-341.24, 46.2-341.26:3, 46.2-817, 58.1-3141, 58.1-4018.1, 60.2-632, or 63.2-1509.

151 The reports shall contain such information as is required by the Exchange and shall be
152 accompanied by fingerprints of the individual arrested for each charge. Effective January 1, 2006, the
153 corresponding photograph of the individual arrested shall accompany the report. Fingerprint cards
154 prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded
155 to the Exchange for transmittal to the appropriate bureau. Nothing in this section shall preclude each local
156 law-enforcement agency from maintaining its own separate photographic database. Fingerprints and
157 photographs required to be taken pursuant to this subsection or subdivision A 3c of § 19.2-123 may be

158 taken at the facility where the magistrate is located, including a regional jail, even if the accused is not
159 committed to jail.

160 Law-enforcement agencies and clerks of court shall only submit reports to the Central Criminal
161 Records Exchange only for those offenses enumerated in this subsection. Only reports received for those
162 offenses enumerated in this subsection shall be included in the Central Criminal Records Exchange.

163 2. For persons arrested and released on summonses in accordance with subsection B or C of §
164 19.2-73 or § 19.2-74, such report shall not be required until (i) a conviction is entered and no appeal is
165 noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his
166 appeal; (ii) the court defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2;
167 or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. Upon such conviction or
168 acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement
169 officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who
170 may be the arresting officer, to ensure that such report is completed for each charge after a determination
171 of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report
172 immediately following the person's conviction or acquittal, and the individual shall be discharged from
173 custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him
174 committed to the custody of the Commissioner of Behavioral Health and Developmental Services.

175 3. For persons arrested on a capias for any allegation of a violation of the terms or conditions of a
176 suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or 53.1-165, a
177 report shall be made to the Central Criminal Records Exchange pursuant to subdivision 1. Upon finding
178 such person in violation of the terms or conditions of a suspended sentence or probation for such felony
179 offense, the court shall order that the fingerprints and photograph of such person be taken by a law-
180 enforcement officer for each such offense and submitted to the Central Criminal Records Exchange.

181 4. For any person served with a show cause for any allegation of a violation of the terms or
182 conditions of a suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or
183 53.1-165, such report to the Central Criminal Records Exchange shall not be required until such person is
184 found to be in violation of the terms or conditions of a suspended sentence or probation for such felony

185 offense. Upon finding such person in violation of the terms or conditions of a suspended sentence or
186 probation for such felony offense, the court shall order that the fingerprints and photograph of such person
187 be taken by a law-enforcement officer for each such offense and submitted to the Central Criminal Records
188 Exchange.

189 5. If the accused is in custody when an indictment or presentment is found or made, or information
190 is filed, and no process is awarded, the attorney for the Commonwealth shall so notify the court of such
191 at the time of first appearance for each indictment, presentment, or information for which a report is
192 required upon arrest pursuant to subdivision 1, and the court shall order that the fingerprints and
193 photograph of the accused be taken for each offense by a law-enforcement officer or by the agency that
194 has custody of the accused at the time of first appearance. The law-enforcement officer or agency taking
195 the fingerprints and photograph shall submit a report to the Central Criminal Records Exchange for each
196 offense.

197 B. Within 72 hours following the receipt of (i) a warrant or capias for the arrest of any person on
198 a charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the law-
199 enforcement agency which received the warrant shall enter the person's name and other appropriate
200 information required by the Department of State Police into the "information systems" known as the
201 Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant
202 to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC), maintained
203 by the Federal Bureau of Investigation. The report shall include the person's name, date of birth, social
204 security number and such other known information which the State Police or Federal Bureau of
205 Investigation may require. Where feasible and practical, the magistrate or court issuing the warrant or
206 capias may transfer information electronically into VCIN. When the information is electronically
207 transferred to VCIN, the court or magistrate shall forthwith forward the warrant or capias to the local
208 police department or sheriff's office. When criminal process has been ordered destroyed pursuant to §
209 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of any
210 information relating to the destroyed criminal process from the VCIN and NCIC.

211 B1. Within 72 hours following the receipt of a written statement issued by a parole officer pursuant
212 to § 53.1-149 or 53.1-162 authorizing the arrest of a person who has violated the provisions of his post-
213 release supervision or probation, the law-enforcement agency that received the written statement shall
214 enter, or cause to be entered, the person's name and other appropriate information required by the
215 Department of State Police into the "information systems" known as the Virginia Criminal Information
216 Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.)
217 of Title 52.

218 C. For offenses not charged on a summons in accordance with subsection B or C of § 19.2-73 or
219 § 19.2-74, the clerk of each circuit court and district court shall make an electronic report to the Central
220 Criminal Records Exchange of (i) any dismissal, including a dismissal pursuant to § 18.2-57.3, 18.2-251,
221 or 19.2-303.2, indefinite postponement or continuance, charge still pending due to mental incompetency
222 or incapacity, deferral, nolle prosequi, acquittal, or conviction of, including any sentence imposed, or
223 failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection
224 A, including any action that may have resulted from an indictment, presentment or information, or any
225 finding that the person is in violation of the terms or conditions of a suspended sentence or probation for
226 a felony offense and (ii) any adjudication of delinquency based upon an act that, if committed by an adult,
227 would require fingerprints to be filed pursuant to subsection A. For offenses listed in subsection A and
228 charged on a summons in accordance with subsection B or C of § 19.2-73 or § 19.2-74, such electronic
229 report by the clerk of each circuit court and district court to the Central Criminal Records Exchange may
230 be submitted but shall not be required until (a) a conviction is entered and no appeal is noted or, if an
231 appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (b)
232 the court defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; or (c) an
233 acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. The clerk of each circuit court shall
234 make an electronic report to the Central Criminal Records Exchange of any finding that a person charged
235 on a summons is in violation of the terms or conditions of a suspended sentence or probation for a felony
236 offense. Upon conviction of any person, including juveniles tried and convicted in the circuit courts
237 pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for which registration is

238 required as defined in § 9.1-902, the clerk shall within seven days of sentencing submit a report to the Sex
239 Offender and Crimes Against Minors Registry. The report to the Registry shall include the name of the
240 person convicted and all aliases that he is known to have used, the date and locality of the conviction for
241 which registration is required, his date of birth, social security number, and last known address, and
242 specific reference to the offense for which he was convicted. No report of conviction or adjudication in a
243 district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been
244 perfected. In the event that the records in the office of any clerk show that any conviction or adjudication
245 has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if
246 appropriate, to the Registry. In addition, each clerk of a circuit court, upon receipt of certification thereof
247 from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency
248 making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided
249 by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or
250 disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the
251 clerk shall report such action to the law-enforcement agency that entered the warrant or capias into the
252 VCIN.

253 D. In addition to those offenses enumerated in subsection A, the Central Criminal Records
254 Exchange may receive, classify, and file any other fingerprints, photographs, and records of confinement
255 submitted to it by any correctional institution or the Department of Corrections. Unless otherwise
256 prohibited by law, any such fingerprints, photographs, and records received by the Central Criminal
257 Records Exchange from any correctional institution or the Department of Corrections may be classified
258 and filed as criminal history record information.

259 E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for
260 maintaining correctional status information, as required by the regulations of the Department of Criminal
261 Justice Services, with respect to individuals about whom reports have been made under the provisions of
262 this chapter shall make reports of changes in correctional status information to the Central Criminal
263 Records Exchange. The reports to the Exchange shall include any commitment to or release or escape

264 from a state or local correctional facility, including commitment to or release from a parole or probation
265 agency.

266 F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported
267 to the Exchange by the office of the Secretary of the Commonwealth.

268 G. Officials responsible for reporting disposition of charges, and correctional changes of status of
269 individuals under this section, including those reports made to the Registry, shall adopt procedures
270 reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible
271 by the most expeditious means and in no instance later than 30 days after occurrence of the disposition or
272 correctional change of status and (ii) to report promptly any correction, deletion, or revision of the
273 information.

274 H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records
275 Exchange shall notify all criminal justice agencies known to have previously received the information.

276 I. As used in this section:

277 "Chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of
278 counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by
279 appropriate resolution or ordinance, in which case the local designation shall be controlling.

280 "Electronic report" means a report transmitted to, or otherwise forwarded to, the Central Criminal
281 Records Exchange in an electronic format approved by the Exchange. The report shall contain the name
282 of the person convicted and all aliases which he is known to have used, the date and locality of the
283 conviction, his date of birth, social security number, last known address, and specific reference to the
284 offense including the Virginia Code section and any subsection, the Virginia crime code for the offense,
285 and the offense tracking number for the offense for which he was convicted.

286 **§ 28.2-901. Summons issued instead of being taken into custody; failure to appear.**

287 A. Whenever any person is detained by or is in the custody of an arresting officer for any violation
288 of the laws enforceable pursuant to § 28.2-900, the arresting officer shall take the name and address of
289 each person detained and issue a summons or otherwise notify him in writing to appear at a time and court
290 to be specified in the summons or notice. When the person gives his written promise to appear at the

291 designated time and place, the officer shall ~~immediately~~ forthwith release him from custody. If any person
292 refuses to give such written promise to appear under the provisions of this section, the arresting officer
293 shall give such person notice of the time and place of the hearing, note such person's refusal to give his
294 written promise to appear on the summons, and forthwith release him from custody.

295 B. If the arresting officer (i) believes a detained person is likely to disregard a summons issued
296 under the provisions of this section or (ii) reasonably believes a detained person is likely to harm himself
297 or another, ~~or if the person refuses to give his written promise to appear~~, the officer may take the offender,
298 vessel, and property into custody. The person shall be brought before the nearest or most accessible
299 judicial officer or other person qualified to admit bail having jurisdiction.

300 C. The failure of any person to appear as required by a summons or notice issued under the
301 provisions of this section shall suspend all licenses issued to the person pursuant to this subtitle until such
302 time as he appears to answer the charges against him. Failure to appear shall bar the issuance of any further
303 license to the person until he appears.

304 **§ 29.1-210. Person arrested may be committed to jail, bailed, recognized or summoned.**

305 Any person arrested for a violation of the game, inland fish and boating laws may be committed
306 to jail pending trial or admitted to bail or released on recognizance as provided by general law; or the
307 arresting officer may issue a summons requiring the person to appear for trial at a time and place specified
308 therein before a court having jurisdiction to try such offenses if the person gives his written promise to
309 appear at the specified time. Such time shall not, however, be less than five days from the date of arrest
310 unless the person requests an earlier hearing.

311 ~~Any person refusing to give the written promise to appear shall be taken immediately by the~~
312 ~~arresting or other police officer before the nearest or most accessible judicial officer.~~ If any person refuses
313 to give such written promise to appear under the provisions of this section, the arresting officer shall give
314 such person notice of the time and place of the hearing, note such person's refusal to give his written
315 promise to appear on the summons, and forthwith release him from custody.

316 Any person who willfully violates his written promise to appear, ~~given~~ or fails to appear at the
317 time and place specified in such summons or notice issued in accordance with this section, ~~shall be~~ is
318 guilty of a Class 2 misdemeanor.

319 **§ 54.1-306. Enforcement of laws by Director or investigators; authority of investigators**
320 **appointed by Director.**

321 A. The Director or investigators appointed by him shall be sworn to enforce the statutes and
322 regulations pertaining to the Department, the regulatory boards within Subtitle II (§ 54.1-200 et seq.) of
323 this title, and any of the programs which may be in another title of this Code for which any regulatory
324 board within Subtitle II has enforcement responsibility. The Director or investigators appointed by him
325 shall have the authority to investigate violations of the statutes and regulations that the Director is required
326 to enforce. The Director or investigators appointed by him shall also have the authority to issue
327 summonses for violations of the statutes and regulations governing the unlicensed practice of professions
328 regulated by the Department. In the event that a person issued such a summons fails or refuses to
329 ~~discontinue the unlawful acts or refuses to give a written promise to appear at the time and place specified~~
330 ~~in the summons~~, the investigator may appear before a magistrate or other issuing authority having
331 jurisdiction to obtain a criminal warrant pursuant to § 19.2-72. In addition, sworn criminal investigators
332 of the Department's Criminal Investigations section shall be statewide conservators of the peace while
333 engaged in the performance of their official duties. If any person refuses to give a written promise to
334 appear for a summons issued under the provisions of this section, the investigator shall give such person
335 notice of the time and place of the hearing, note such person's refusal to give his written promise to appear
336 on the summons, and forthwith release him from custody.

337 The failure of any person to appear as required by a summons or notice issued under the provisions
338 of this section shall suspend all licenses issued to the person pursuant to this subtitle until such time as he
339 appears to answer the charges against him. Failure to appear shall bar the issuance of any further license
340 to the person until he appears.

341 B. All investigators appointed by the Director are vested with the authority to administer oaths or
342 affirmations for the purpose of receiving complaints and conducting investigations of violations of this

343 subtitle, or any regulation promulgated pursuant to authority given by this subtitle or in connection with
344 any investigation conducted on behalf of any regulatory board within this subtitle or a program which may
345 be located in another title in this Code. Such investigators are vested with the authority to obtain, serve
346 and execute any warrant, paper or process issued by any court or magistrate or any regulatory board under
347 the authority of the Director and request and receive criminal history information under the provisions of
348 § 19.2-389.

349 C. Any regulatory board within the Department of Professional and Occupational Regulation may
350 adopt a resolution delegating to the sworn investigators appointed by the Director pursuant to § 54.1-306,
351 the authority to conduct inspections. After conducting an inspection pursuant to the delegation of
352 inspection authority, an investigator may initiate an investigation based on any act, omission, or condition
353 witnessed by the investigator and offer a consent agreement to the regulant to resolve any violation
354 discovered during the inspection, subject to the provisions of subsection B of § 54.1-202. If a consent
355 agreement is offered pursuant to the delegation of authority authorized by this subsection, it shall not
356 become effective until approved by the Director.

357 **§ 54.1-2506. Enforcement of laws by Director and investigative personnel; authority of**
358 **investigative personnel and Director.**

359 A. The Director and investigative personnel appointed by him shall be sworn to enforce the statutes
360 and regulations pertaining to the Department, the Board, and the health regulatory boards and shall have
361 the authority to investigate any violations of those statutes and regulations and to the extent otherwise
362 authorized by law inspect any office or facility operated, owned or employing individuals regulated by
363 any health regulatory board. The Director or his designee shall have the power to subpoena witnesses and
364 to request and obtain patient records, business records, papers, and physical or other evidence in the course
365 of any investigation or to issue subpoenas requiring the production of such evidence. A subpoena issued
366 pursuant to this section may be served by (i) any person authorized to serve process under § 8.01-293, (ii)
367 investigative personnel appointed by the Director, (iii) registered or certified mail or by equivalent
368 commercial parcel delivery service, or (iv) email or facsimile if requested to do so by the recipient. Upon
369 failure of any person to comply with a subpoena duly served, the Director may, pursuant to § 54.1-111,

370 request that the Attorney General or the attorney for the Commonwealth for the jurisdiction in which the
371 recipient of the subpoena resides, is found, or transacts business seek enforcement of the subpoena in such
372 jurisdiction.

373 B. All investigative personnel shall be vested with the authority to (i) administer oaths or
374 affirmations for the purpose of receiving complaints of violations of this subtitle, (ii) serve and execute
375 any warrant, paper or process issued by any court or magistrate, the Board, the Director or in his absence
376 a designated subordinate, or by any regulatory board under the authority of the Director, (iii) request and
377 receive criminal history information under the provisions of § 19.2-389, and (iv) request and receive social
378 security numbers from practitioners or federal employee identification numbers from facilities.

379 C. The Director shall have the authority to issue summonses for violations of statutes and
380 regulations governing the unlicensed practice of professions regulated by the Department. The Director
381 may delegate such authority to investigators appointed by him. In the event that a person issued such a
382 summons fails or refuses to discontinue the unlawful acts ~~or refuses to give a written promise to appear at~~
383 ~~the time and place specified in the summons~~, the investigator may appear before a magistrate or other
384 issuing authority having jurisdiction to obtain a criminal warrant pursuant to § 19.2-72. If any person
385 refuses to give a written promise to appear for a summons issued under the provisions of this section, the
386 investigator shall give such person notice of the time and place of the hearing, note such person's refusal
387 to give his written promise to appear on the summons, and forthwith release him from custody.

388 The failure of any person to appear as required by a summons or notice issued under the provisions
389 of this section shall suspend all licenses issued to the person pursuant to this subtitle until such time as he
390 appears to answer the charges against him. Failure to appear shall bar the issuance of any further license
391 to the person until he appears.

392 **§ 54.1-4407. Enforcement of laws by the Executive Director or investigators; authority of**
393 **investigators appointed by the Executive Director.**

394 A. The Executive Director or investigators appointed by him shall:

395 1. Be sworn to enforce the statutes and regulations pertaining to the Board;

396 2. Have the authority to investigate violations of the statutes and regulations that the Executive
397 Director is required to enforce;

398 3. Have the authority to issue summonses for violations of the provisions of this chapter or
399 regulations promulgated by the Board.

400 B. In the event that a person or entity that is issued a summons by the Executive Director or
401 investigators appointed by him fails or refuses to discontinue the unlawful acts ~~or refuses to give a written~~
402 ~~promise to appear at the time and place specified in the summons~~, the Executive Director or the
403 investigators may appear before a magistrate or other issuing authority having jurisdiction to obtain a
404 criminal warrant under § 19.2-72. If any person refuses to give a written promise to appear for a summons
405 issued under the provisions of this section, the Executive Director or an investigator appointed by him
406 shall give such person notice of the time and place of the hearing, note such person's refusal to give his
407 written promise to appear on the summons, and forthwith release him from custody.

408 The failure of any person to appear as required by a summons or notice issued under the provisions
409 of this section shall suspend all licenses issued to the person pursuant to this subtitle until such time as he
410 appears to answer the charges against him. Failure to appear shall bar the issuance of any further license
411 to the person until he appears.

412 C. The Executive Director and all investigators appointed by the Executive Director are vested
413 with the authority to administer oaths or affirmations (i) for the purpose of receiving complaints and
414 conducting investigations of violations of the provisions of this chapter or any regulations promulgated
415 by the Board or (ii) in connection with any investigation conducted on behalf of the Board. The Executive
416 Director and the investigators are vested with the authority to (a) obtain, serve, and execute any warrant,
417 paper, or process issued by any court or magistrate or by the Board under the authority of the Executive
418 Director and (b) request and receive criminal history information under the provisions of § 19.2-389.

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