

SENATE BILL NO. 98

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on _____)

(Patron Prior to Substitute--Senator Hanger)

A BILL to amend and reenact §§ 2.2-311, 19.2-74, 19.2-128, 28.2-901, 29.1-210, 54.1-306, 54.1-2506, and 54.1-4407 of the Code of Virginia, relating to promise to appear after the issuance of a summons.

Be it enacted by the General Assembly of Virginia:

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

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

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

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

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

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

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

46 **§ 19.2-74. Issuance and service of summons in place of warrant in misdemeanor case;**
47 **issuance of summons by special conservators of the peace.**

48 A. 1. Whenever any person is detained by or is in the custody of an arresting officer for any
49 violation committed in such officer's presence which offense is a violation of any county, city or town
50 ordinance or of any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other
51 misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title 46.2, or for
52 offenses listed in subsection D of § 19.2-81, or an arrest on a warrant charging an offense for which a
53 summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the

54 arresting officer shall take the name and address of such person and issue a summons or otherwise notify
55 him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving
56 by such person of his written promise to appear at such time and place, the officer shall forthwith release
57 him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the
58 officer may proceed according to the provisions of § 19.2-82.

59 Anything in this section to the contrary notwithstanding, if any person is believed by the arresting
60 officer to be likely to disregard a summons issued under the provisions of this subsection, or if any person
61 is reasonably believed by the arresting officer to be likely to cause harm to himself or to any other person,
62 a magistrate or other issuing authority having jurisdiction shall proceed according to the provisions of §
63 19.2-82.

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

73 3. Unless otherwise authorized by law, any person so summoned shall not be held in custody after
74 the issuance of such summons for the purpose of complying with the requirements of Chapter 23 (§ 19.2-
75 387 et seq.). Reports to the Central Criminal Records Exchange concerning such persons shall be made
76 pursuant to subdivision A 2 of § 19.2-390 and subsection C of § 19.2-390.

77 ~~Any~~ ~~If any person refusing~~ refuses to give such written promise to appear under the provisions of
78 this section ~~shall be taken immediately by the arresting or other police officer before a magistrate or other~~
79 ~~issuing authority having jurisdiction, who shall proceed according to provisions of § 19.2-82,~~ the arresting

80 officer shall give such person notice of the time and place of the hearing, note such person's refusal to give
81 his written promise to appear on the summons, and forthwith release him from custody.

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

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

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

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

97 **§ 19.2-128. Penalties for failure to appear.**

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

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

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

110 **§ 28.2-901. Summons issued instead of being taken into custody; failure to appear.**

111 A. Whenever any person is detained by or is in the custody of an arresting officer for any violation
112 of the laws enforceable pursuant to § 28.2-900, the arresting officer shall take the name and address of
113 each person detained and issue a summons or otherwise notify him in writing to appear at a time and court
114 to be specified in the summons or notice. When the person gives his written promise to appear at the
115 designated time and place, the officer shall ~~immediately~~ forthwith release him from custody. If any person
116 refuses to give such written promise to appear under the provisions of this section, the arresting officer
117 shall give such person notice of the time and place of the hearing, note such person's refusal to give his
118 written promise to appear on the summons, and forthwith release him from custody.

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

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

128 **§ 29.1-210. Person arrested may be committed to jail, bailed, recognized or summoned.**

129 Any person arrested for a violation of the game, inland fish and boating laws may be committed
130 to jail pending trial or admitted to bail or released on recognizance as provided by general law; or the
131 arresting officer may issue a summons requiring the person to appear for trial at a time and place specified
132 therein before a court having jurisdiction to try such offenses if the person gives his written promise to

133 appear at the specified time. Such time shall not, however, be less than five days from the date of arrest
134 unless the person requests an earlier hearing.

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

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

143 **§ 54.1-306. Enforcement of laws by Director or investigators; authority of investigators**
144 **appointed by Director.**

145 A. The Director or investigators appointed by him shall be sworn to enforce the statutes and
146 regulations pertaining to the Department, the regulatory boards within Subtitle II (§ 54.1-200 et seq.) of
147 this title, and any of the programs which may be in another title of this Code for which any regulatory
148 board within Subtitle II has enforcement responsibility. The Director or investigators appointed by him
149 shall have the authority to investigate violations of the statutes and regulations that the Director is required
150 to enforce. The Director or investigators appointed by him shall also have the authority to issue
151 summonses for violations of the statutes and regulations governing the unlicensed practice of professions
152 regulated by the Department. In the event that a person issued such a summons fails or refuses to
153 ~~discontinue the unlawful acts or refuses to give a written promise to appear at the time and place specified~~
154 ~~in the summons,~~ the investigator may appear before a magistrate or other issuing authority having
155 jurisdiction to obtain a criminal warrant pursuant to § 19.2-72. In addition, sworn criminal investigators
156 of the Department's Criminal Investigations section shall be statewide conservators of the peace while
157 engaged in the performance of their official duties. If any person refuses to give a written promise to
158 appear for a summons issued under the provisions of this section, the investigator shall give such person

159 notice of the time and place of the hearing, note such person's refusal to give his written promise to appear
160 on the summons, and forthwith release him from custody.

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

165 B. All investigators appointed by the Director are vested with the authority to administer oaths or
166 affirmations for the purpose of receiving complaints and conducting investigations of violations of this
167 subtitle, or any regulation promulgated pursuant to authority given by this subtitle or in connection with
168 any investigation conducted on behalf of any regulatory board within this subtitle or a program which may
169 be located in another title in this Code. Such investigators are vested with the authority to obtain, serve
170 and execute any warrant, paper or process issued by any court or magistrate or any regulatory board under
171 the authority of the Director and request and receive criminal history information under the provisions of
172 § 19.2-389.

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

181 **§ 54.1-2506. Enforcement of laws by Director and investigative personnel; authority of**
182 **investigative personnel and Director.**

183 A. The Director and investigative personnel appointed by him shall be sworn to enforce the statutes
184 and regulations pertaining to the Department, the Board, and the health regulatory boards and shall have
185 the authority to investigate any violations of those statutes and regulations and to the extent otherwise

186 authorized by law inspect any office or facility operated, owned or employing individuals regulated by
187 any health regulatory board. The Director or his designee shall have the power to subpoena witnesses and
188 to request and obtain patient records, business records, papers, and physical or other evidence in the course
189 of any investigation or to issue subpoenas requiring the production of such evidence. A subpoena issued
190 pursuant to this section may be served by (i) any person authorized to serve process under § 8.01-293, (ii)
191 investigative personnel appointed by the Director, (iii) registered or certified mail or by equivalent
192 commercial parcel delivery service, or (iv) email or facsimile if requested to do so by the recipient. Upon
193 failure of any person to comply with a subpoena duly served, the Director may, pursuant to § 54.1-111,
194 request that the Attorney General or the attorney for the Commonwealth for the jurisdiction in which the
195 recipient of the subpoena resides, is found, or transacts business seek enforcement of the subpoena in such
196 jurisdiction.

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

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

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

216 **§ 54.1-4407. Enforcement of laws by the Executive Director or investigators; authority of**
217 **investigators appointed by the Executive Director.**

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

- 219 1. Be sworn to enforce the statutes and regulations pertaining to the Board;
- 220 2. Have the authority to investigate violations of the statutes and regulations that the Executive
221 Director is required to enforce;
- 222 3. Have the authority to issue summonses for violations of the provisions of this chapter or
223 regulations promulgated by the Board.

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

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

236 C. The Executive Director and all investigators appointed by the Executive Director are vested
237 with the authority to administer oaths or affirmations (i) for the purpose of receiving complaints and
238 conducting investigations of violations of the provisions of this chapter or any regulations promulgated

239 by the Board or (ii) in connection with any investigation conducted on behalf of the Board. The Executive
240 Director and the investigators are vested with the authority to (a) obtain, serve, and execute any warrant,
241 paper, or process issued by any court or magistrate or by the Board under the authority of the Executive
242 Director and (b) request and receive criminal history information under the provisions of § 19.2-389.

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