

SENATE BILL NO. 643

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice

on _____)

(Patrons Prior to Substitute--Senators Aird and Deeds)

A BILL to amend and reenact §§ 16.1-69.24, 18.2-456, and 19.2-128 of the Code of Virginia, relating to penalties for failure to appear; contempt.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.24, 18.2-456, and 19.2-128 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-69.24. Contempt of court.

A. A judge of a district court shall have the same powers and jurisdiction as a judge of a circuit court to punish summarily for contempt, but in no case shall the fine exceed \$250 and imprisonment exceed 10 days for the same contempt. From any such fine or sentence, there shall be an appeal of right within the period prescribed in this title and to the court or courts designated therein for appeals in other cases, and the proceedings on such appeal shall conform in all respects to the provisions of §§ 18.2-456 through 18.2-459.

B. Any person charged with a felony offense, misdemeanor offense, or released on a summons pursuant to § 19.2-73 or 19.2-74 who fails to appear before any court or judicial officer as required shall not be punished for contempt under this provision but ~~may~~ shall be punished for such contempt ~~under subdivision A-6 of~~ pursuant to § 18.2-456 19.2-128.

§ 18.2-456. Cases in which courts and judges may punish summarily for contempt.

A. The courts and judges may issue attachments for contempt, and punish them summarily, only in the following cases:

1. Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice;

27 2. Violence, or threats of violence, to a judge or officer of the court, or to a juror, witness, or party
28 going to, attending, or returning from the court, for or in respect of any act or proceeding had, or to be
29 had, in such court;

30 3. Vile, contemptuous, or insulting language addressed to or published of a judge for or in respect
31 of any act or proceeding had, or to be had, in such court, or like language used in his presence and intended
32 for his hearing for or in respect of such act or proceeding;

33 4. Misbehavior of an officer of the court in his official character; and

34 5. Disobedience or resistance of an officer of the court, juror, witness, or other person to any lawful
35 process, judgment, decree, or order of the court; ~~and~~

36 ~~6. Willful failure to appear before any court or judicial officer as required after having been~~
37 ~~charged with a felony offense or misdemeanor offense or released on a summons pursuant to § 19.2-73 or~~
38 ~~19.2-74.~~

39 B. The judge shall indicate, in writing, under which subdivision in subsection A a person is being
40 charged and punished for contempt.

41 ~~C. Nothing in subdivision A 6 shall be construed to prohibit prosecution under § 19.2-128. Any~~
42 ~~person charged with a felony offense, misdemeanor offense, or released on a summons pursuant to § 19.2-~~
43 ~~73 or 19.2-74 who fails to appear before any court shall be prosecuted pursuant to § 19.2-128.~~

44 **§ 19.2-128. Penalties for failure to appear.**

45 A. Whoever, having been released pursuant to this chapter or § 19.2-319 or on a summons pursuant
46 to § 19.2-73 or § 19.2-74, willfully fails to appear before any court or judicial officer as required, shall,
47 after notice to all interested parties, incur a forfeiture of any security ~~which~~ that may have been given or
48 pledged for his release, unless one of the parties can show good cause for excusing the absence; or unless
49 the court, in its sound discretion, shall determine that neither the interests of justice nor the power of the
50 court to conduct orderly proceedings will be served by such forfeiture. For purposes of this subsection,
51 when the court determines whether a non-appearance was willful, the court shall consider mitigating
52 circumstances. These circumstances may include (i) an illness, injury, or other unforeseen medical
53 condition; (ii) unforeseen transportation problems; or (iii) an inability to obtain adequate dependent care.

54 The provisions of this section shall not apply to any person who is (a) incarcerated in any correctional
55 facility; (b) (1) detained in any state or federal facility or (2) in the custody of a law-enforcement officer
56 at the time such person is required to appear before any court or judicial officer; or (c) has a matter
57 scheduled to appear before another court and appears before such court on the same date.

58 B. Any person (i) charged with ~~a felony~~ any offense or (ii) convicted of ~~a felony~~ any offense and
59 for whom execution of sentence is suspended pursuant to § 19.2-319 who willfully fails to appear before
60 any court as required ~~shall be~~ is guilty of ~~a Class 6 felony~~ contempt punishable by a fine of no more than
61 \$100 or imprisonment of no more than two days, either or both.

62 C. ~~Any person (i) charged with a misdemeanor offense or (ii) convicted of a misdemeanor offense~~
63 ~~and execution of sentence is suspended pursuant to § 19.2-319 who willfully fails to appear before any~~
64 ~~court as required shall be guilty of a Class 1 misdemeanor.~~ If a person does not appear in court as required,
65 the court shall first issue a rule to show cause summons returnable at a future date for such person's
66 appearance. If such person fails to appear at the show cause hearing, the court may issue a capias.

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