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## HOUSE BILL NO. 570

Offered January 14, 2004

Prefiled January 13, 2004

*A BILL to amend and reenact §§ 19.2-74, 19.2-82 and 19.2-120 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-81.6, relating to detention and arrest of illegal aliens and unidentified people.*

Patrons—Albo, Black and Rust

Referred to Committee for Courts of Justice

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

**1. That §§ 19.2-74, 19.2-82 and 19.2-120 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-81.6 as follows:**

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

A. 1. Whenever any person is detained by or is in the custody of an arresting officer for any violation committed in such officer's presence which offense is a violation of any county, city or town ordinance or of any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title 46.2, or § 18.2-266, or an arrest on a warrant charging an offense for which a summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person ~~shall fail~~ *fails* or ~~refuse~~ *refuses* to discontinue the unlawful act, the officer may proceed according to the provisions of § 19.2-82.

Anything in this section to the contrary notwithstanding, (i) if any person is believed by the arresting officer to be likely to disregard a summons issued under the provisions of this subsection, ~~or (ii) if the officer is unable to verify the identity of any person lawfully detained by or in the custody of an arresting officer in accordance with this section, or (iii) if any person is reasonably believed by the arresting officer to be likely to cause harm to himself or to any other person, a magistrate or other issuing authority having jurisdiction shall proceed according to the provisions of § 19.2-82.~~

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

3. Any person so summoned shall not be held in custody after the issuance of such summons for the purpose of complying with the requirements of Chapter 23 (§ 19.2-387 et seq.) of this title. Reports to the Central Criminal Records Exchange concerning such persons shall be made after a disposition of guilt is entered as provided for in § 19.2-390.

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

Any person who willfully violates his written promise to appear, given in accordance with this section, shall be treated in accordance with the provisions of § 19.2-128, regardless of the disposition of, and in addition to, the charge upon which he was originally arrested.

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

B. Special policemen of the counties as provided in § 15.2-1737, special policemen or conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) of this title and special policemen appointed by authority of a city's charter may issue summonses pursuant to this section, if such officers are in uniform, or displaying a badge of office. On application, the chief law-enforcement officer of the county or city shall supply each officer with a supply of summons forms, for which such officer shall account

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59 pursuant to regulation of such chief law-enforcement officer.

60 C. The summons used by a law-enforcement officer pursuant to this section shall be in form the  
61 same as the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388.

62 § 19.2-81.6. *Authority of law-enforcement officers to detain illegal aliens.*

63 A. Any law-enforcement officer, as defined in § 19.2-81, may, in the course of acting upon  
64 reasonable suspicion that a criminal offense has occurred, is occurring, or will occur, and upon  
65 receiving appropriate confirmation from the Bureau of Immigration and Customs Enforcement of the  
66 United States Department of Homeland Security, detain without a warrant an individual who (i) is an  
67 alien illegally present in the United States, and (ii) is subject to deportation by the United States.

68 B. Any detention pursuant to this section shall be only for such period of time as may be required  
69 for the Bureau of Immigration and Customs Enforcement to take the individual into federal custody.

70 § 19.2-82. Procedure upon arrest without warrant.

71 A person arrested without a warrant shall be brought forthwith before a magistrate or other issuing  
72 authority having jurisdiction who shall proceed to examine the officer making the arrest under oath. If  
73 the magistrate or other issuing authority having jurisdiction has lawful probable cause upon which to  
74 believe that a criminal offense has been committed, and that the person arrested has committed such  
75 offense, he shall issue either a warrant under the provisions of § 19.2-72 or a summons under the  
76 provisions of § 19.2-73.

77 As used in this section the term "brought before a magistrate or other issuing authority having  
78 jurisdiction" shall include a personal appearance before such authority or any two-way electronic video  
79 and audio communication meeting the requirements of § 19.2-3.1, in order that the accused and the  
80 arresting officer may simultaneously see and speak to such magistrate or authority. If electronic means  
81 are used, any documents filed may be transmitted in accordance with § 19.2-3.1.

82 If a warrant is issued the case shall thereafter be disposed of under the provisions of §§ 19.2-183  
83 through 19.2-190, if the issuing officer is a judge; under the provisions of §§ 19.2-119 through 19.2-134,  
84 if the issuing officer is a magistrate or other issuing officer having jurisdiction.

85 If such warrant or summons is not issued, the person so arrested shall be released. *Notwithstanding*  
86 *any other provision of law, the person so arrested may be detained until law enforcement receives*  
87 *notification of the identity of the person and the person's immigration status or until the person is*  
88 *released into federal custody in accordance with § 19.2-81.6.*

89 § 19.2-120. Admission to bail.

90 Prior to conducting any hearing on the issue of bail, release or detention, the judicial officer shall, to  
91 the extent feasible, obtain the person's criminal history.

92 A. A person who is held in custody pending trial or hearing for an offense, civil or criminal  
93 contempt, or otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to  
94 believe that:

95 1. He will not appear for trial or hearing or at such other time and place as may be directed, or

96 2. His liberty will constitute an unreasonable danger to himself or the public.

97 B. The judicial officer shall presume, subject to rebuttal, that no condition or combination of  
98 conditions will reasonably assure the appearance of the person or the safety of the public if the person is  
99 currently charged with:

100 1. An act of violence as defined in § 19.2-297.1;

101 2. An offense for which the maximum sentence is life imprisonment or death;

102 3. A violation of §§ 18.2-248, 18.2-248.01, 18.2-255 or § 18.2-255.2 involving a Schedule I or II  
103 controlled substance if (i) the maximum term of imprisonment is ten years or more and the person was  
104 previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as  
105 defined in § 18.2-248;

106 4. A violation of §§ 18.2-308.1, 18.2-308.2, or § 18.2-308.4 and which relates to a firearm and  
107 provides for a minimum, mandatory sentence;

108 5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1  
109 or 2, whether under the laws of this Commonwealth or substantially similar laws of the United States;

110 6. Any felony committed while the person is on release pending trial for a prior felony under federal  
111 or state law or on release pending imposition or execution of sentence or appeal of sentence or  
112 conviction;

113 7. An offense listed in subsection B of § 18.2-67.5:2 and the person had previously been convicted  
114 of an offense listed in § 18.2-67.5:2 and the judicial officer finds probable cause to believe that the  
115 person who is currently charged with one of these offenses committed the offense charged; or

116 8. A violation of § 18.2-46.5 or § 18.2-46.7.

117 C. *The judicial officer shall presume, subject to rebuttal, that no condition or combination of*  
118 *conditions will reasonably assure the appearance of the person or the safety of the public if the person*  
119 *is being detained pursuant to § 19.2-81.6, or if the person is an illegal alien.*

120 D. The court shall consider the following factors and such others as it deems appropriate in

determining, for the purpose of rebuttal of the presumption against bail described in subsection B, whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of the public:

1. The nature and circumstances of the offense charged;

2. The history and characteristics of the person, including his character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

3. The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

*DE.* The judicial officer shall inform the person of his right to appeal from the order denying bail or fixing terms of bond or recognizance consistent with § 19.2-124.