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HOUSE BILL NO. 891**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice
on February 1, 2008)

(Patron Prior to Substitute—Delegate Lohr)

*A BILL to amend and reenact § 46.2-936 of the Code of Virginia, relating to arrest at discretion of officer for third offense of driving on a suspended license.***Be it enacted by the General Assembly of Virginia:****1. That § 46.2-936 of the Code of Virginia is amended and reenacted as follows:**

§ 46.2-936. Arrest for misdemeanor; release on summons and promise to appear; right to demand hearing immediately or within ~~twenty-four~~ 24 hours; issuance of warrant on request of officer for violations of §§ 46.2-301 and 46.2-302; refusal to promise to appear; violations.

Whenever any person is detained by or in the custody of an arresting officer, including an arrest on a warrant, for a violation of any provision of this title punishable as a misdemeanor, the arresting officer shall, except as otherwise provided in § 46.2-940, take the name and address of such person and the license number of his motor vehicle 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. Such time shall be at least five days after such arrest unless the person arrested demands an earlier hearing. Such person shall, if he so desires, have a right to an immediate hearing, or a hearing within ~~twenty-four~~ 24 hours at a convenient hour, before a court having jurisdiction under this title within the county, city, or town wherein such offense was committed. 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.

Notwithstanding the foregoing provisions of this section, *if the person has been at least twice previously convicted of a violation of §§ 46.2-301 or 46.2-302, or if prior general approval has been granted by order of the general district court for the use of this section in cases involving violations of §§ 46.2-301 and 46.2-302,* the arresting officer may take the person before the appropriate judicial officer of the county or city in which the violation occurred and make oath as to the offense and request issuance of a warrant. If a warrant is issued, the judicial officer shall proceed in accordance with the provisions of Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2.

Notwithstanding any other provision of this section, in cases involving a violation of § 46.2-341.24 or § 46.2-341.31, the arresting officer shall take the person before a magistrate as provided in §§ 46.2-341.26:2 and 46.2-341.26:3. The magistrate may issue either a summons or a warrant as he shall deem proper.

Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting officer before a magistrate or other issuing officer having jurisdiction who shall proceed according to the provisions of § 46.2-940.

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 § 46.2-938.

Any officer violating any of the provisions of this section shall be guilty of misconduct in office and subject to removal therefrom upon complaint filed by any person in a court of competent jurisdiction. This section shall not be construed to limit the removal of a law-enforcement officer for other misconduct in office.