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## HOUSE BILL NO. 770

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on February 10, 2010)

(Patrons Prior to Substitute—Delegates Cleaveland and Iaquinto [HB 1254])

A BILL to amend and reenact §§ 19.2-73, 19.2-74, 19.2-80, 19.2-81, and 19.2-82 of the Code of Virginia, relating to arrest without warrant.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-73, 19.2-74, 19.2-80, 19.2-81, and 19.2-82 of the Code of Virginia are amended and reenacted as follows:

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

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

B. If any person under suspicion for driving while intoxicated has been taken to a medical facility for treatment or evaluation of his medical condition, the arresting officer at the medical facility may issue, on the premises of the medical facility, *release the person from custody by executing* a summons for a violation of § 18.2-266, 18.2-266.1, 18.2-272 or 46.2-341.24 and for refusal of tests in violation of subsection A of § 18.2-268.3 or subsection A of § 46.2-341.26:3, in lieu of securing a warrant.

C. Any person on whom such summons is served shall appear on the date set forth in same, and if such person fails to appear in such court at such time and on such date then he 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.

§ 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, for offenses listed in subsection D of § 19.2-81,~~ 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 or refuse 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, if any person is believed by the arresting officer to be likely to disregard a summons issued under the provisions of this subsection, or 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 or refuse 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.

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

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

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

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

73 § 19.2-80. Duty of arresting officer; bail.

74 In any case in which an officer does not issue a summons pursuant to *subsection B of § 19.2-73*,  
75 § 19.2-74, *subsection C of § 18.2-268.3*, or § 46.2-936, a law-enforcement officer ~~making an arrest under~~  
76 ~~a warrant or capias~~ shall bring the arrested person without unnecessary delay before a judicial officer.  
77 The judicial officer shall immediately conduct a bail hearing and either admit the accused to bail or  
78 commit him to jail. However, if (i) the accused is charged with a misdemeanor and is brought before a  
79 judge of the court having jurisdiction to try the case and (ii) both the accused and the Commonwealth  
80 consent, the judge may proceed to trial instead of conducting a bail hearing.

81 § 19.2-81. Arrest without warrant authorized in certain cases.

82 A. The following officers shall have the powers of arrest as provided in this section:

- 83 1. Members of the State Police force of the Commonwealth;
- 84 2. Sheriffs of the various counties and cities, and their deputies;
- 85 3. Members of any county police force or any duly constituted police force of any city or town of  
86 the Commonwealth;
- 87 4. The Commissioner, members and employees of the Marine Resources Commission granted the  
88 power of arrest pursuant to § 28.2-900;
- 89 5. Regular conservation police officers appointed pursuant to § 29.1-200;
- 90 6. United States Coast Guard and United States Coast Guard Reserve commissioned, warrant, and  
91 petty officers authorized under § 29.1-205 to make arrests;
- 92 7. The special policemen of the counties as provided by § 15.2-1737, provided such officers are in  
93 uniform, or displaying a badge of office;
- 94 8. Conservation officers appointed pursuant to § 10.1-115; and
- 95 9. Full-time sworn members of the enforcement division of the Department of Motor Vehicles  
96 appointed pursuant to § 46.2-217.

97 B. Such officers may arrest, without a warrant, any person who commits any crime in the presence  
98 of the officer and any person whom he has reasonable grounds or probable cause to suspect of having  
99 committed a felony not in his presence.

100 Any such officer may arrest without a warrant any person whom the officer has probable cause to  
101 suspect of operating a watercraft or motor boat (i) while intoxicated in violation of subsection B of  
102 § 29.1-738 or (ii) in violation of an order issued pursuant to § 29.1-738.4, in his presence, and may  
103 thereafter transfer custody of the person suspected of the violation to another officer, who may obtain a  
104 warrant based upon statements made to him by the arresting officer.

105 C. Any such officer may, at the scene of any accident involving a motor vehicle, watercraft as  
106 defined in § 29.1-712 or motorboat, or at any hospital or medical facility to which any person involved  
107 in such accident has been transported, or in the apprehension of any person charged with the theft of  
108 any motor vehicle, on any of the highways or waters of the Commonwealth, upon reasonable grounds to  
109 believe, based upon personal investigation, including information obtained from eyewitnesses, that a  
110 crime has been committed by any person then and there present, apprehend such person without a  
111 warrant of arrest. For purposes of this section, "the scene of any accident" shall include a reasonable  
112 location where a vehicle or person involved in an accident has been moved at the direction of a  
113 law-enforcement officer to facilitate the clearing of the highway or to ensure the safety of the motoring  
114 public.

115 D. In addition, such officer may, within three hours of the occurrence of any such accident involving  
116 a motor vehicle, arrest without a warrant at any location any person whom the officer has probable  
117 cause to suspect of driving or operating such a motor vehicle, *watercraft or motorboat* while intoxicated  
118 in violation of § 18.2-266, 18.2-266.1, 46.2-341.24, or *subsection B of § 29.1-738; or a substantially*  
119 *similar ordinance of any county, city, or town in the Commonwealth, whether or not those offenses were*  
120 *committed in such officer's presence.*

121 E. Such officers may arrest, without a warrant or a capias, persons duly charged with a crime in

another jurisdiction upon receipt of a photocopy of a warrant or a capias, telegram, computer printout, facsimile printout, a radio, telephone or teletype message, in which photocopy of a warrant, telegram, computer printout, facsimile printout, radio, telephone or teletype message shall be given the name or a reasonably accurate description of such person wanted and the crime alleged.

F. Such officers may arrest, without a warrant or a capias, for an alleged misdemeanor not committed in his presence when the officer receives a radio message from his department or other law-enforcement agency within the Commonwealth that a warrant or capias for such offense is on file.

G. Such officers may also arrest without a warrant for an alleged misdemeanor not committed in their presence involving (i) shoplifting in violation of § 18.2-96 or 18.2-103 or a similar local ordinance, (ii) carrying a weapon on school property in violation of § 18.2-308.1, (iii) assault and battery, (iv) brandishing a firearm in violation of § 18.2-282, or (v) destruction of property in violation of § 18.2-137, when such property is located on premises used for business or commercial purposes, or a similar local ordinance, when any such arrest is based on probable cause upon reasonable complaint of the person who observed the alleged offense. The arresting officer may issue a summons to any person arrested under this section for a misdemeanor violation involving shoplifting.

§ 19.2-82. Procedure upon arrest without warrant.

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

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

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

If such warrant or summons is not issued, the person so arrested shall be released.

B. A warrant may be issued pursuant to this section, where the person has been arrested in accordance with § 19.2-81.6, and the magistrate or other issuing authority examines the officer making the arrest under oath, and finds lawful probable cause to believe the arrested individual meets the conditions of clauses (i) and (ii) of § 19.2-81.6. If such warrant is issued, it shall recite § 19.2-81.6 and the applicable violation of federal criminal law previously confirmed with Immigration and Customs Enforcement. Upon the person being taken into federal custody, such state warrant shall be dismissed. Any warrant issued under this subsection shall expire within 72 hours, or when the person is taken into federal custody, whichever occurs first. Recurrent applications for a warrant under this subsection shall not be permitted within a six-month period except where confirmation has been received from Immigration and Customs Enforcement that the arrested person will be taken into federal custody.

**2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the Acts of Assembly of 2009 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**