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**HOUSE BILL NO. 1347**

Offered January 14, 2015

Prefiled December 1, 2014

*A BILL to amend and reenact §§ 8.01-407, 16.1-77, and 53.1-21 of the Code of Virginia and to repeal § 46.2-355.1 of the Code of Virginia, relating to habitual offenders; intervention interview.*

Patron—Carr

Referred to Committee on Transportation

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

**1. That §§ 8.01-407, 16.1-77, and 53.1-21 of the Code of Virginia are amended and reenacted as follows:**

**§ 8.01-407. How summons for witness issued, and to whom directed; prior permission of court to summon certain officials and judges; attendance before commissioner of other state; attorney-issued summons.**

A. A summons may be issued, directed as prescribed in § 8.01-292, commanding the officer to summon any person to attend on the day and at the place that such attendance is desired, to give evidence before a court, grand jury, arbitrators, magistrate, notary, or any commissioner or other person appointed by a court or acting under its process or authority in a judicial or quasi-judicial capacity. The summons may be issued by the clerk of the court if the attendance is desired at a court or in a proceeding pending in a court. The clerk shall not impose any time restrictions limiting the right to properly request a summons up to and including the date of the proceeding:

If attendance is desired before a commissioner in chancery or other commissioner of a court, the summons may be issued by the clerk of the court in which the matter is pending, or by such commissioner in chancery or other commissioner;

If attendance is desired before a notary or other officer taking a deposition, the summons may be issued by such notary or other officer at the instance of the attorney desiring the attendance of the person sought;

If attendance is sought before a grand jury, the summons may be issued by the attorney for the Commonwealth, or the clerk of the court, at the instance of the attorney for the Commonwealth.

Except as otherwise provided in this subsection, if attendance is desired in a civil proceeding pending in a court or at a deposition in connection with such proceeding, including medical malpractice review panels, and a claim before the Workers' Compensation Commission, a summons may be issued by an attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. An attorney-issued summons shall be on a form approved by the Supreme Court, signed by the attorney and shall include the attorney's address. The summons and any transmittal sheet shall be deemed to be a pleading to which the provisions of § 8.01-271.1 shall apply. A copy of the summons and, if served by a sheriff, all service of process fees, shall be mailed or delivered to the clerk's office of the court in which the case is pending or the Workers' Compensation Commission, as applicable, on the day of issuance by the attorney. The law governing summonses issued by a clerk shall apply mutatis mutandis. When an attorney-at-law transmits one or more attorney-issued subpoenas to a sheriff to be served in his jurisdiction, such subpoenas shall be accompanied by a transmittal sheet. The transmittal sheet, which may be in the form of a letter, shall contain for each subpoena: (i) the person to be served, (ii) the name of the city or county in which the subpoena is to be served, in parentheses, (iii) the style of the case in which the subpoena was issued, (iv) the court in which the case is pending, and (v) the amount of fees tendered or paid to each clerk in whose court the case is pending together with a photocopy of the payment instrument or clerk's receipt. If copies of the same transmittal sheet are used to send subpoenas to more than one sheriff for service of process, then subpoenas shall be grouped by the jurisdiction in which they are to be served. For each person to be served, an original subpoena and copy thereof shall be included. If the attorney desires a return copy of the transmittal sheet as proof of receipt, he shall also enclose an additional copy of the transmittal sheet together with an envelope addressed to the attorney with sufficient first class postage affixed. Upon receipt of such transmittal, the transmittal sheet shall be date-stamped and, if the extra copy and above-described envelope are provided, the copy shall also be date-stamped and returned to the attorney-at-law in the above-described envelope.

However, when such transmittal does not comply with the provisions of this section, the sheriff may promptly return such transmittal if accompanied by a short description of such noncompliance. An attorney may not issue a summons in any of the following civil proceedings: (i) habeas corpus under Article 3 (§ 8.01-654 et seq.) of Chapter 25 of this title, (ii) delinquency or abuse and neglect

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HB1347

proceedings under Article 3 (§ 16.1-241 et seq.) of Chapter 11 of Title 16.1, (iii) civil forfeiture proceedings, (iv) habitual offender proceedings under Article 9 (§ ~~46.2-354~~ 46.2-356 et seq.) of Chapter 3 of Title 46.2, (v) administrative license suspension pursuant to § 46.2-391.2, and (vi) petition for writs of mandamus or prohibition in connection with criminal proceedings. A sheriff shall not be required to serve an attorney-issued subpoena that is not issued at least five business days prior to the date that attendance is desired.

In other cases, if attendance is desired, the summons may be issued by the clerk of the circuit court of the county or city in which the attendance is desired.

A summons shall express on whose behalf, and in what case or about what matter, the witness is to attend. Failure to respond to any such summons shall be punishable by the court in which the proceeding is pending as for contempt. When any subpoena is served less than five calendar days before appearance is required, the court may, after considering all of the circumstances, refuse to enforce the subpoena for lack of adequate notice. If any subpoena is served less than five calendar days before appearance is required upon any judicial officer generally incompetent to testify pursuant to § 19.2-271, such subpoena shall be without legal force or effect unless the subpoena has been issued by a judge.

B. No subpoena shall, without permission of the court first obtained, issue for the attendance of the Governor, Lieutenant Governor, or Attorney General of this Commonwealth, a judge of any court thereof; the President or Vice President of the United States; any member of the President's Cabinet; any ambassador or consul; or any military officer on active duty holding the rank of admiral or general.

C. This section shall be deemed to authorize a summons to compel attendance of a citizen of the Commonwealth before commissioners or other persons appointed by authority of another state when the summons requires the attendance of such witness at a place not out of his county or city.

**§ 16.1-77. Civil jurisdiction of general district courts.**

Except as provided in Article 5 (§ 16.1-122.1 et seq.) of this chapter, each general district court shall have, within the limits of the territory it serves, civil jurisdiction as follows:

(1) Exclusive original jurisdiction of any claim to specific personal property or to any debt, fine or other money, or to damages for breach of contract or for injury done to property, real or personal, or for any injury to the person that would be recoverable by action at law or suit in equity, when the amount of such claim does not exceed \$4,500 exclusive of interest and any attorney's fees contracted for in the instrument, and concurrent jurisdiction with the circuit courts having jurisdiction in such territory of any such claim when the amount thereof exceeds \$4,500 but does not exceed \$25,000, exclusive of interest and any attorney's fees contracted for in the instrument. However, this \$25,000 limit shall not apply with respect to distress warrants under the provisions of § 55-230, cases involving liquidated damages for violations of vehicle weight limits pursuant to § 46.2-1135, nor cases involving forfeiture of a bond pursuant to § 19.2-143.

(2) Jurisdiction to try and decide attachment cases when the amount of the plaintiff's claim does not exceed \$25,000 exclusive of interest and any attorney's fees contracted for in the instrument.

(3) Jurisdiction of actions of unlawful entry or detainer as provided in Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01, and in Chapter 13 (§ 55-217 et seq.) of Title 55, and the maximum jurisdictional limits prescribed in subdivision (1) shall not apply to any claim, counter-claim or cross-claim in an unlawful detainer action that includes a claim for damages sustained or rent against any person obligated on the lease or guarantee of such lease.

(4) Except where otherwise specifically provided, all jurisdiction, power and authority over any civil action or proceeding conferred upon any general district court judge or magistrate under or by virtue of any provisions of the Code of Virginia.

(5) Jurisdiction to try and decide suits in interpleader involving personal or real property where the amount of money or value of the property is not more than the maximum jurisdictional limits of the general district court. However, the maximum jurisdictional limits prescribed in subdivision (1) shall not apply to any claim, counter-claim, or cross-claim in an interpleader action that is limited to the disposition of an earnest money deposit pursuant to a real estate purchase contract. The action shall be brought in accordance with the procedures for interpleader as set forth in § 8.01-364. However, the general district court shall not have any power to issue injunctions. Actions in interpleader may be brought by either the stakeholder or any of the claimants. The initial pleading shall be either by motion for judgment, by warrant in debt, or by other uniform court form established by the Supreme Court of Virginia. The initial pleading shall briefly set forth the circumstances of the claim and shall name as defendant all parties in interest who are not parties plaintiff.

(6) Jurisdiction to try and decide any cases pursuant to § 2.2-3713 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) or § 2.2-3809 of the Government Data Collection and Dissemination Practices Act, for writs of mandamus or for injunctions.

(7) Concurrent jurisdiction with the circuit courts having jurisdiction in such territory to adjudicate habitual offenders pursuant to the provisions of Article 9 (§ ~~46.2-355.1~~ 46.2-356 et seq.) of Chapter 3 of Title 46.2.

(8) Jurisdiction to try and decide cases alleging a civil violation described in § 18.2-76.

(9) Jurisdiction to try and decide any cases pursuant to § 55-79.80:2 of the Condominium Act (§ 55-79.39 et seq.) or § 55-513 of the Property Owners' Association Act (§ 55-508 et seq.).

**§ 53.1-21. Transfer of prisoners into and between state and local correctional facilities.**

A. Any person who (1) is accused or convicted of an offense (a) in violation of any county, city or town ordinance within the Commonwealth, (b) against the laws of the Commonwealth or (c) against the laws of any other state or country, or (2) is a witness held in any case in which the Commonwealth is a party and who is confined in a state or local correctional facility, may be transferred by the Director, subject to the provisions of § 53.1-20, to any other state or local correctional facility which he may designate.

B. The following limitations shall apply to the transfer of persons into the custody of the Department:

1. No person convicted of violating § 20-61 shall be committed or transferred to the custody of the Department.

2. No person who is convicted of any violation pursuant to Article 9 (§ ~~46.2-355.1~~ 46.2-356 et seq.) of Chapter 3 of Title 46.2 shall be committed or transferred to the custody of the Department without the consent of the Director.

3. No person who is convicted of a misdemeanor or a felony and receives a jail sentence of twelve months or less shall be committed or transferred to the custody of the Department without the consent of the Director.

4. Beginning July 1, 1991, and subject to the provisions of § 53.1-20, no person, whether convicted of a felony or misdemeanor, shall be transferred to the custody of the Department when the combined length of all sentences to be served totals two years or less, without the consent of the Director.

**2. That § 46.2-355.1 of the Code of Virginia is repealed.**

**3. That any person who (i) has been notified by the Commissioner of the Department of Motor Vehicles that pursuant to the provisions of § 46.2-355.1 of the Code of Virginia such person is required to report to a Virginia Alcohol Safety Action Program for an intervention interview and (ii) has not reported for such interview shall not be required to report for such interview.**

**4. That the Commissioner of the Department of Motor Vehicles shall reinstate any person's privilege to operate a motor vehicle when such privilege was suspended pursuant to the provisions of § 46.2-355.1 of the Code of Virginia, except no person's privilege to operate a motor vehicle shall be reinstated if any other provision of law requires that it be suspended. The Commissioner shall contact any such person to notify him that his privilege to operate a motor vehicle has been reinstated, and no such person shall be required to pay any fee for such reinstatement.**