

2021 SPECIAL SESSION I

INTRODUCED

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SENATE BILL NO. 1437

Offered January 15, 2021

A *BILL to amend and reenact §§ 2.2-311, 19.2-74, 28.2-901, 29.1-210, 46.2-936, 46.2-940, 54.1-306, 54.1-2506, and 54.1-4407 of the Code of Virginia, relating to promises to appear after the issuance of a summons.*

Patrons—Hanger and Surovell

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-311, 19.2-74, 28.2-901, 29.1-210, 46.2-936, 46.2-940, 54.1-306, 54.1-2506, and 54.1-4407 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-311. Enforcement of laws by the State Inspector General or investigators; police power of the Office of State Inspector General; training.

A. The State Inspector General may designate himself and no more than 30 members of the investigations unit of the Office to have the same powers as a sheriff or a law-enforcement officer in the investigation of allegations of criminal behavior affecting the operations of a state agency or nonstate agency pursuant to his duties as set forth in this chapter. Such employees shall be subject to any minimum training standards established by the Department of Criminal Justice Services under § 9.1-102 for law-enforcement officers prior to exercising any law-enforcement power under this subsection.

The State Inspector General and the Superintendent of the Virginia State Police shall enter into a Memorandum of Understanding setting forth the respective roles and responsibilities of their agencies, including but not limited to the categories of investigations that will be overseen by each agency and how to avoid redundancy or operation conflicts. The Memorandum of Understanding will be approved by the Governor's chief of staff and will be reviewed periodically at the request of either agency, but not less than every four years, and revised as agreed to by the agencies and endorsed by the Governor's chief of staff.

B. The State Inspector General or investigators as may be designated by him also shall have the authority to issue summonses for violations of the statutes that the State Inspector General is required to enforce. In the event that a person issued such a summons fails or refuses to discontinue the unlawful acts or refuses to give a written promise to appear at the time and place specified in the summons, the investigator may appear before a magistrate or other issuing authority having jurisdiction to obtain a criminal warrant pursuant to § 19.2-72.

C. All investigators appointed by the State Inspector General are vested with the authority to administer oaths or affirmations for the purpose of receiving complaints and conducting investigations of violations of the statutes and regulations that the State Inspector General is required to enforce. Such investigators are vested with the authority to obtain, serve, and execute any warrant, paper, or process issued by any court or magistrate or under the authority of the State Inspector General, and request and receive criminal history information under the provisions of § 19.2-389.

§ 19.2-74. Issuance and service of summons in place of warrant in misdemeanor case; issuance of summons by special 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 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 issuance of such summons or notice to such person, 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.

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59 2. Whenever any person is detained by or is in the custody of an arresting officer for a violation of
60 any county, city, or town ordinance or of any provision of this Code, punishable as a Class 3 or Class 4
61 misdemeanor or any other misdemeanor for which he cannot receive a jail sentence, except as otherwise
62 provided in Title 46.2, or to the offense of public drunkenness as defined in § 18.2-388, the arresting
63 officer shall take the name and address of such person and issue a summons or otherwise notify him in
64 writing to appear at a time and place to be specified in such summons or notice. Upon the giving of
65 such person of his written promise to appear at such time and place issuance of such summons or notice
66 to such person, the officer shall forthwith release him from custody. However, if any such person shall
67 fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of
68 § 19.2-82.

69 3. Unless otherwise authorized by law, any person so summoned shall not be held in custody after
70 the issuance of such summons for the purpose of complying with the requirements of Chapter 23
71 (§ 19.2-387 et seq.). Reports to the Central Criminal Records Exchange concerning such persons shall be
72 made pursuant to subdivision A 2 of § 19.2-390 and subsection C of § 19.2-390.

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

76 Any person who willfully violates his written promise fails to appear, given at a time and place to
77 be specified in such summons or notice issued in accordance with this section, shall be treated in
78 accordance with the provisions of § 19.2-128, regardless of the disposition of, and in addition to, the
79 charge upon which he was originally arrested.

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

82 B. Conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) may issue summonses
83 pursuant to this section, if such officers are in uniform or displaying a badge of office. On application,
84 the chief law-enforcement officer of the county or city shall supply each officer with a supply of
85 summons forms, for which such officer shall account pursuant to regulation of such chief
86 law-enforcement officer.

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

89 **§ 28.2-901. Summons issued instead of being taken into custody; failure to appear.**

90 A. Whenever any person is detained by or is in the custody of an arresting officer for any violation
91 of the laws enforceable pursuant to § 28.2-900, the arresting officer shall take the name and address of
92 each person detained and issue a summons or otherwise notify him in writing to appear at a time and
93 court to be specified in the summons or notice. When the person gives his written promise to appear at
94 the designated time and place Upon the issuance of such summons or notice to such person, the officer
95 shall immediately release him from custody.

96 B. If the arresting officer (i) believes a detained person is likely to disregard a summons issued under
97 the provisions of this section or (ii) reasonably believes a detained person is likely to harm himself or
98 another, or if the person refuses to give his written promise to appear, the officer may take the offender,
99 vessel and property into custody. The person shall be brought before the nearest or most accessible
100 judicial officer or other person qualified to admit bail having jurisdiction.

101 C. The failure of any person to appear as required by a summons issued under the provisions of this
102 section shall suspend all licenses issued to the person pursuant to this subtitle until such time as he
103 appears to answer the charges against him. Failure to appear shall bar the issuance of any further license
104 to the person until he appears.

105 **§ 29.1-210. Person arrested may be committed to jail, bailed, recognized or summoned.**

106 Any person arrested for a violation of the game, inland fish and boating laws may be committed to
107 jail pending trial or admitted to bail or released on recognizance as provided by general law; or the
108 arresting officer may issue a summons requiring the person to appear for trial at a time and place
109 specified therein before a court having jurisdiction to try such offenses if the person gives his written
110 promise to appear at the specified time and shall forthwith release him from custody. Such time shall
111 not, however, be less than five days from the date of arrest unless the person requests an earlier hearing.

112 Any person refusing to give the written promise to appear shall be taken immediately by the
113 arresting or other police officer before the nearest or most accessible judicial officer.

114 Any person who willfully violates his written promise fails to appear, given for trial at a time and
115 place before a court having jurisdiction to try such offenses specified in such summons issued in
116 accordance with this section, shall be is guilty of a Class 2 misdemeanor.

117 **§ 46.2-936. Arrest for misdemeanor; release on summons; right to demand hearing immediately**
118 **or within twenty-four hours; issuance of warrant on request of officer for violations of §§ 46.2-301**
119 **and 46.2-302; violations.**

120 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 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 issuance of such summons or notice to such person, the officer shall forthwith release him from custody.

Notwithstanding the foregoing provisions of this section, 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 fails to appear, given at the time and place specified in such summons or notice issued 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.

§ 46.2-940. When arresting officer shall take person before issuing authority.

If any person is: (i) believed by the arresting officer to have committed a felony; or (ii) believed by the arresting officer to be likely to disregard a summons issued under § 46.2-936; or (iii) refuses to give a written promise to appear under the provisions of § 46.2-936, the arresting officer shall promptly take him before a magistrate or other issuing authority having jurisdiction and proceed in accordance with the provisions of § 19.2-82. The magistrate or other authority may issue either a summons or warrant as he shall determine proper.

§ 54.1-306. Enforcement of laws by Director or investigators; authority of investigators appointed by Director.

A. The Director or investigators appointed by him shall be sworn to enforce the statutes and regulations pertaining to the Department, the regulatory boards within Subtitle II (§ 54.1-200 et seq.) of this title, and any of the programs which may be in another title of this Code for which any regulatory board within Subtitle II has enforcement responsibility. The Director or investigators appointed by him shall have the authority to investigate violations of the statutes and regulations that the Director is required to enforce. The Director or investigators appointed by him shall also have the authority to issue summonses for violations of the statutes and regulations governing the unlicensed practice of professions regulated by the Department. In the event that a person issued such a summons fails or refuses to discontinue the unlawful acts or refuses to give a written promise to appear at the time and place specified in the summons, the investigator may appear before a magistrate or other issuing authority having jurisdiction to obtain a criminal warrant pursuant to § 19.2-72. In addition, sworn criminal investigators of the Department's Criminal Investigations section shall be statewide conservators of the peace while engaged in the performance of their official duties.

B. All investigators appointed by the Director are vested with the authority to administer oaths or affirmations for the purpose of receiving complaints and conducting investigations of violations of this subtitle, or any regulation promulgated pursuant to authority given by this subtitle or in connection with any investigation conducted on behalf of any regulatory board within this subtitle or a program which may be located in another title in this Code. Such investigators are vested with the authority to obtain, serve and execute any warrant, paper or process issued by any court or magistrate or any regulatory board under the authority of the Director and request and receive criminal history information under the provisions of § 19.2-389.

C. Any regulatory board within the Department of Professional and Occupational Regulation may

adopt a resolution delegating to the sworn investigators appointed by the Director pursuant to § 54.1-306, the authority to conduct inspections. After conducting an inspection pursuant to the delegation of inspection authority, an investigator may initiate an investigation based on any act, omission, or condition witnessed by the investigator and offer a consent agreement to the regulant to resolve any violation discovered during the inspection, subject to the provisions of subsection B of § 54.1-202. If a consent agreement is offered pursuant to the delegation of authority authorized by this subsection, it shall not become effective until approved by the Director.

§ 54.1-2506. Enforcement of laws by Director and investigative personnel; authority of investigative personnel and Director.

A. The Director and investigative personnel appointed by him shall be sworn to enforce the statutes and regulations pertaining to the Department, the Board, and the health regulatory boards and shall have the authority to investigate any violations of those statutes and regulations and to the extent otherwise authorized by law inspect any office or facility operated, owned or employing individuals regulated by any health regulatory board. The Director or his designee shall have the power to subpoena witnesses and to request and obtain patient records, business records, papers, and physical or other evidence in the course of any investigation or to issue subpoenas requiring the production of such evidence. A subpoena issued pursuant to this section may be served by (i) any person authorized to serve process under § 8.01-293, (ii) investigative personnel appointed by the Director, (iii) registered or certified mail or by equivalent commercial parcel delivery service, or (iv) email or facsimile if requested to do so by the recipient. Upon failure of any person to comply with a subpoena duly served, the Director may, pursuant to § 54.1-111, request that the Attorney General or the attorney for the Commonwealth for the jurisdiction in which the recipient of the subpoena resides, is found, or transacts business seek enforcement of the subpoena in such jurisdiction.

B. All investigative personnel shall be vested with the authority to (i) administer oaths or affirmations for the purpose of receiving complaints of violations of this subtitle, (ii) serve and execute any warrant, paper or process issued by any court or magistrate, the Board, the Director or in his absence a designated subordinate, or by any regulatory board under the authority of the Director, (iii) request and receive criminal history information under the provisions of § 19.2-389, and (iv) request and receive social security numbers from practitioners or federal employee identification numbers from facilities.

C. The Director shall have the authority to issue summonses for violations of statutes and regulations governing the unlicensed practice of professions regulated by the Department. The Director may delegate such authority to investigators appointed by him. In the event *that* a person issued such a summons fails or refuses to discontinue the unlawful acts ~~or refuses to give a written promise to appear at the time and place specified in the summons~~, the investigator may appear before a magistrate or other issuing authority having jurisdiction to obtain a criminal warrant pursuant to § 19.2-72.

§ 54.1-4407. Enforcement of laws by the Executive Director or investigators; authority of investigators appointed by the Executive Director.

A. The Executive Director or investigators appointed by him shall:

1. Be sworn to enforce the statutes and regulations pertaining to the Board;
2. Have the authority to investigate violations of the statutes and regulations that the Executive Director is required to enforce;
3. Have the authority to issue summonses for violations of the provisions of this chapter or regulations promulgated by the Board.

B. In the event *that* a person or entity that is issued a summons by the Executive Director or investigators appointed by him fails or refuses to discontinue the unlawful acts ~~or refuses to give a written promise to appear at the time and place specified in the summons~~, the Executive Director or the investigators may appear before a magistrate or other issuing authority having jurisdiction to obtain a criminal warrant under § 19.2-72.

C. The Executive Director and all investigators appointed by the Executive Director are vested with the authority to administer oaths or affirmations (i) for the purpose of receiving complaints and conducting investigations of violations of the provisions of this chapter or any regulations promulgated by the Board or (ii) in connection with any investigation conducted on behalf of the Board. The Executive Director and the investigators are vested with the authority to (a) obtain, serve, and execute any warrant, paper, or process issued by any court or magistrate or by the Board under the authority of the Executive Director and (b) request and receive criminal history information under the provisions of § 19.2-389.