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SENATE BILL NO. 1362

Offered January 11, 2023

Prefiled January 11, 2023

A BILL to amend and reenact §§ 18.2-460, 19.2-74, and 19.2-390 of the Code of Virginia, relating to resisting detention; penalty.

Patrons—Norment and Reeves

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-460, 19.2-74, and 19.2-390 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-460. Obstructing justice; resisting arrest or detention; fleeing from a law-enforcement officer; penalties.

A. If any person without just cause knowingly obstructs a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any law-enforcement officer, or animal control officer employed pursuant to § 3.2-6555 in the performance of his duties as such or fails or refuses without just cause to cease such obstruction when requested to do so by such judge, magistrate, justice, juror, attorney for the Commonwealth, witness, law-enforcement officer, or animal control officer employed pursuant to § 3.2-6555, he is guilty of a Class 1 misdemeanor.

B. Except as provided in subsection C, any person who, by threats or force, knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any law-enforcement officer, or an animal control officer employed pursuant to § 3.2-6555 lawfully engaged in his duties as such, or to obstruct or impede the administration of justice in any court, is guilty of a Class 1 misdemeanor.

C. If any person by threats of bodily harm or force knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, any law-enforcement officer, lawfully engaged in the discharge of his duty, or to obstruct or impede the administration of justice in any court relating to a violation of or conspiracy to violate § 18.2-248 or subdivision (a)(3), (b) or (c) of § 18.2-248.1, or § 18.2-46.2 or § 18.2-46.3, or relating to the violation of or conspiracy to violate any violent felony offense listed in subsection C of § 17.1-805, he is guilty of a Class 5 felony.

D. Any person who knowingly and willfully makes any materially false statement or representation to a law-enforcement officer or an animal control officer employed pursuant to § 3.2-6555 who is in the course of conducting an investigation of a crime by another is guilty of a Class 1 misdemeanor.

E. Any person who intentionally prevents or attempts to prevent a law-enforcement officer from lawfully arresting him, with or without a warrant, is guilty of a Class 1 misdemeanor. For purposes of this subsection, intentionally preventing or attempting to prevent a lawful arrest means fleeing from a law-enforcement officer when (i) the officer applies physical force to the person, or (ii) the officer communicates to the person that he is under arrest and (a) the officer has the legal authority and the immediate physical ability to place the person under arrest, and (b) a reasonable person who receives such communication knows or should know that he is not free to leave.

F. Any person who intentionally prevents or attempts to prevent a law-enforcement officer from lawfully detaining him is guilty of a Class 3 misdemeanor. For purposes of this subsection, intentionally preventing or attempting to prevent a lawful detention means fleeing or attempting to flee from a law-enforcement officer when (i) the officer has legal justification to detain the person, (ii) the officer communicates to the person an order to stop, and (iii) the person refuses to obey the order to stop.

§ 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, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful

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59 act, the officer may proceed according to the provisions of § 19.2-82.

60 Anything in this section to the contrary notwithstanding, if any person is believed by the arresting
61 officer to be likely to disregard a summons issued under the provisions of this subsection, or if any
62 person is reasonably believed by the arresting officer to be likely to cause harm to himself or to any
63 other person, a magistrate or other issuing authority having jurisdiction shall proceed according to the
64 provisions of § 19.2-82.

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

74 3. Unless otherwise authorized by law, any person so summoned shall not be held in custody after
75 the issuance of such summons for the purpose of complying with the requirements of Chapter 23
76 (§ 19.2-387 et seq.). Reports to the Central Criminal Records Exchange concerning such persons shall be
77 made pursuant to subdivision A 2 of § 19.2-390 and subsection C of § 19.2-390.

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

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

84 Any person charged with committing any violation of § 18.2-407 or subsection F of § 18.2-460 may
85 be arrested and immediately brought before a magistrate who shall proceed as provided in § 19.2-82.

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

91 C. The summons used by a law-enforcement officer pursuant to this section shall be in form the
92 same as the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388. If
93 the summons is issued for an offense in violation of any county, city, or town ordinance that is similar
94 to any provision of this Code, the summons shall reference the offense using both the citation
95 corresponding to the county, city, or town ordinance and the specific provision of this Code.

96 **§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace,**
97 **clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material**
98 **submitted by other agencies.**

99 A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police
100 officials of cities and towns, and any other local law-enforcement officer or conservator of the peace
101 having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange,
102 on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or
103 service of process upon, any person on charges resulting from an indictment, presentment or
104 information, the arrest on *capias* or warrant for failure to appear, and the service of a warrant for
105 another jurisdiction, for each charge when any person is arrested on any of the following charges:

106 a. Treason;

107 b. Any felony;

108 c. Any offense punishable as a misdemeanor under Title 54.1;

109 d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, or any similar
110 ordinance of any county, city or town, (ii) under § 20-61, or (iii) under § 16.1-253.2; or

111 e. Any offense in violation of § 3.2-6570, 4.1-309.1, 5.1-13, or 15.2-1612, subsection F of §
112 18.2-460, or § 22.1-289.041, 46.2-339, 46.2-341.21, 46.2-341.24, 46.2-341.26:3, 46.2-817, 58.1-3141,
113 58.1-4018.1, 60.2-632, or 63.2-1509.

114 The reports shall contain such information as is required by the Exchange and shall be accompanied
115 by fingerprints of the individual arrested for each charge. Effective January 1, 2006, the corresponding
116 photograph of the individual arrested shall accompany the report. Fingerprint cards prepared by a
117 law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the
118 Exchange for transmittal to the appropriate bureau. Nothing in this section shall preclude each local
119 law-enforcement agency from maintaining its own separate photographic database. Fingerprints and
120 photographs required to be taken pursuant to this subsection or subdivision A 3c of § 19.2-123 may be

121 taken at the facility where the magistrate is located, including a regional jail, even if the accused is not
122 committed to jail.

123 Law-enforcement agencies and clerks of court shall only submit reports to the Central Criminal
124 Records Exchange only for those offenses enumerated in this subsection. Only reports received for those
125 offenses enumerated in this subsection shall be included in the Central Criminal Records Exchange.

126 2. For persons arrested and released on summonses in accordance with subsection B of § 19.2-73 or
127 § 19.2-74, such report shall not be required until (i) a conviction is entered and no appeal is noted or if
128 an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal;
129 (ii) the court defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; or (iii)
130 an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. Upon such conviction or acquittal,
131 the court shall remand the individual to the custody of the office of the chief law-enforcement officer of
132 the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be
133 the arresting officer, to ensure that such report is completed for each charge after a determination of
134 guilt or acquittal by reason of insanity. The court shall require the officer to complete the report
135 immediately following the person's conviction or acquittal, and the individual shall be discharged from
136 custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him
137 committed to the custody of the Commissioner of Behavioral Health and Developmental Services.

138 3. For persons arrested on a capias for any allegation of a violation of the terms or conditions of a
139 suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or 53.1-165, a
140 report shall be made to the Central Criminal Records Exchange pursuant to subdivision 1. Upon finding
141 such person in violation of the terms or conditions of a suspended sentence or probation for such felony
142 offense, the court shall order that the fingerprints and photograph of such person be taken by a
143 law-enforcement officer for each such offense and submitted to the Central Criminal Records Exchange.

144 4. For any person served with a show cause for any allegation of a violation of the terms or
145 conditions of a suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306,
146 or 53.1-165, such report to the Central Criminal Records Exchange shall not be required until such
147 person is found to be in violation of the terms or conditions of a suspended sentence or probation for
148 such felony offense. Upon finding such person in violation of the terms or conditions of a suspended
149 sentence or probation for such felony offense, the court shall order that the fingerprints and photograph
150 of such person be taken by a law-enforcement officer for each such offense and submitted to the Central
151 Criminal Records Exchange.

152 5. If the accused is in custody when an indictment or presentment is found or made, or information
153 is filed, and no process is awarded, the attorney for the Commonwealth shall so notify the court of such
154 at the time of first appearance for each indictment, presentment, or information for which a report is
155 required upon arrest pursuant to subdivision 1, and the court shall order that the fingerprints and
156 photograph of the accused be taken for each offense by a law-enforcement officer or by the agency that
157 has custody of the accused at the time of first appearance. The law-enforcement officer or agency taking
158 the fingerprints and photograph shall submit a report to the Central Criminal Records Exchange for each
159 offense.

160 B. Within 72 hours following the receipt of (i) a warrant or capias for the arrest of any person on a
161 charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the
162 law-enforcement agency which received the warrant shall enter the person's name and other appropriate
163 information required by the Department of State Police into the "information systems" known as the
164 Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant
165 to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC),
166 maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of
167 birth, social security number and such other known information which the State Police or Federal
168 Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the
169 warrant or capias may transfer information electronically into VCIN. When the information is
170 electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or capias
171 to the local police department or sheriff's office. When criminal process has been ordered destroyed
172 pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of
173 any information relating to the destroyed criminal process from the VCIN and NCIC.

174 B1. Within 72 hours following the receipt of a written statement issued by a parole officer pursuant
175 to § 53.1-149 or 53.1-162 authorizing the arrest of a person who has violated the provisions of his
176 post-release supervision or probation, the law-enforcement agency that received the written statement
177 shall enter, or cause to be entered, the person's name and other appropriate information required by the
178 Department of State Police into the "information systems" known as the Virginia Criminal Information
179 Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.)
180 of Title 52.

181 C. For offenses not charged on a summons in accordance with subsection B of § 19.2-73 or

§ 19.2-74, the clerk of each circuit court and district court shall make an electronic report to the Central Criminal Records Exchange of (i) any dismissal, including a dismissal pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2, indefinite postponement or continuance, charge still pending due to mental incompetency or incapacity, deferral, nolle prosequi, acquittal, or conviction of, including any sentence imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection A, including any action that may have resulted from an indictment, presentment or information, or any finding that the person is in violation of the terms or conditions of a suspended sentence or probation for a felony offense and (ii) any adjudication of delinquency based upon an act that, if committed by an adult, would require fingerprints to be filed pursuant to subsection A. For offenses listed in subsection A and charged on a summons in accordance with subsection B of § 19.2-73 or § 19.2-74, such electronic report by the clerk of each circuit court and district court to the Central Criminal Records Exchange may be submitted but shall not be required until (a) a conviction is entered and no appeal is noted or, if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (b) the court defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; or (c) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. The clerk of each circuit court shall make an electronic report to the Central Criminal Records Exchange of any finding that a person charged on a summons is in violation of the terms or conditions of a suspended sentence or probation for a felony offense. Upon conviction of any person, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for which registration is required as defined in § 9.1-902, the clerk shall within seven days of sentencing submit a report to the Sex Offender and Crimes Against Minors Registry. The report to the Registry shall include the name of the person convicted and all aliases that he is known to have used, the date and locality of the conviction for which registration is required, his date of birth, social security number, and last known address, and specific reference to the offense for which he was convicted. No report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or capias into the VCIN.

D. In addition to those offenses enumerated in subsection A, the Central Criminal Records Exchange may receive, classify, and file any other fingerprints, photographs, and records of confinement submitted to it by any correctional institution or the Department of Corrections. Unless otherwise prohibited by law, any such fingerprints, photographs, and records received by the Central Criminal Records Exchange from any correctional institution or the Department of Corrections may be classified and filed as criminal history record information.

E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining correctional status information, as required by the regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange. The reports to the Exchange shall include any commitment to or release or escape from a state or local correctional facility, including commitment to or release from a parole or probation agency.

F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to the Exchange by the office of the Secretary of the Commonwealth.

G. Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section, including those reports made to the Registry, shall adopt procedures reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than 30 days after occurrence of the disposition or correctional change of status and (ii) to report promptly any correction, deletion, or revision of the information.

H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

I. As used in this section:

"Chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.

"Electronic report" means a report transmitted to, or otherwise forwarded to, the Central Criminal

244 Records Exchange in an electronic format approved by the Exchange. The report shall contain the name
245 of the person convicted and all aliases which he is known to have used, the date and locality of the
246 conviction, his date of birth, social security number, last known address, and specific reference to the
247 offense including the Virginia Code section and any subsection, the Virginia crime code for the offense,
248 and the offense tracking number for the offense for which he was convicted.

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