

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 415

An Act to amend and reenact § 46.2-351.2 of the Code of Virginia, relating to habitual offenders; show cause.

[H 787]

Approved March 31, 1996

Be it enacted by the General Assembly of Virginia:

1. That § 46.2-351.2 of the Code of Virginia is amended and reenacted as follows:

§ 46.2-351.2. Summons to show cause to be issued upon conviction of third qualifying offense.

A. Upon conviction of a defendant in any case involving driving while intoxicated in violation of § 18.2-266 or a substantially similar local ordinance, or any other offense which qualifies as one which might be used for determination as an habitual offender as set forth in subdivision 1 of § 46.2-351, the court shall immediately review the defendant's Department of Motor Vehicles transcript or abstract of convictions if available. Upon a finding that the instant conviction may bring the defendant within the definition of an habitual offender as set forth in subdivision 1 of § 46.2-351, the court shall forthwith ~~issue an order~~ *the issuance of a summons* which directs the defendant to appear and show cause why he should not be declared an habitual offender as provided in § 46.2-354. The show cause proceeding shall be held not less than 120 days after the date of ~~such order~~ *the summons*. ~~This order~~ *The summons* shall be immediately served upon the defendant. Such service shall be deemed adequate notice of the show cause proceeding, and no other notice shall be required.

B. At the time the abstract of conviction is transmitted to the Commissioner, the court shall order the Commissioner to certify the defendant's transcript or abstract of convictions, substantially in the manner provided for in § 46.2-215. One copy of such certified transcript or abstract shall be sent to the attorney for the Commonwealth in the jurisdiction of the court issuing the ~~show cause order~~ *summons* and one copy to the court. The Commissioner shall also mail, by first class mail, one copy to the defendant not less than thirty days prior to the date set in the court order for the show cause proceeding.

C. ~~However,~~ If the conviction of the third qualifying offense *occurs in the general district court and is appealed by the defendant to the circuit court*, the pending show cause proceeding *in the general district court* shall be stayed *until the tenth day following the conviction. If the appeal is not withdrawn within the ten-day period, the show cause proceeding shall be dismissed by the general district court. Upon entry of a final order of conviction of a third qualifying offense by a circuit court, the circuit court shall proceed as otherwise provided in this section.*

If the conviction of the third qualifying offense occurs in a circuit court and is appealed by the defendant, the pending show cause proceeding in the circuit court shall be stayed until such appeal is concluded. Should the defendant prevail on appeal, the show cause proceeding in the circuit court shall be dismissed, and the clerk of that court shall file with the Department an order of dismissal. When the appeal is from a district court to a circuit court and a final order of conviction is entered, the circuit court then shall proceed under this section.

D. The Commissioner shall cause the Department's records to reflect the show cause proceeding and the disposition thereof.