

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

4
5 Approved

[H 787]

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

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

8 § 46.2-351.2. Summons to show cause to be issued upon conviction of third qualifying offense.

9 A. Upon conviction of a defendant in any case involving driving while intoxicated in violation of
10 § 18.2-266 or a substantially similar local ordinance, or any other offense which qualifies as one which
11 might be used for determination as an habitual offender as set forth in subdivision 1 of § 46.2-351, the
12 court shall immediately review the defendant's Department of Motor Vehicles transcript or abstract of
13 convictions if available. Upon a finding that the instant conviction may bring the defendant within the
14 definition of an habitual offender as set forth in subdivision 1 of § 46.2-351, the court shall forthwith
15 ~~issue an order the issuance of a summons~~ which directs the defendant to appear and show cause why he
16 should not be declared an habitual offender as provided in § 46.2-354. The show cause proceeding shall
17 be held not less than 120 days after the date of ~~such order the summons. This order~~ The summons shall
18 be immediately served upon the defendant. Such service shall be deemed adequate notice of the show
19 cause proceeding, and no other notice shall be required.

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

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

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

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

ENROLLED

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