

1996 RECONVENED SESSION

ENROLLED

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

[S 360]

Approved

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 Show cause order to be issued upon conviction of third qualifying offense.

A. ~~Upon conviction of a defendant in~~ *Immediately following disposition of* 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~~ *person may be* within the definition of an habitual offender as set forth in subdivision 1 of § 46.2-351, the court shall forthwith issue an order 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. This order 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~~ *Notice of the show cause order shall be* transmitted to the Commissioner, *along with the abstract of conviction, if any,* and the court shall order the Commissioner to certify the ~~defendant's person's~~ transcript or abstract of convictions, substantially in the manner provided for in § 46.2-215, *for use in the show cause hearing.* 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 and one copy to the court. The Commissioner shall also mail, by first class mail, one copy to the ~~defendant~~ *person* 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 is appealed by the ~~defendant person~~, the pending show cause proceeding shall be stayed until such appeal is concluded. Should the ~~defendant person~~ prevail on appeal, the show cause proceeding shall be dismissed, and the clerk 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.

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