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SENATE BILL NO. 688

Offered January 22, 2010

A BILL to amend and reenact §§ 19.2-74 and 19.2-81 of the Code of Virginia, relating to arrest without warrant; DUI.

Patron—Reynolds

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-74 and 19.2-81 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-74. Issuance and service of summons in place of warrant in misdemeanor case; issuance of summons by special policemen and 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 ~~§ 18.2-266~~, 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 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.

2. Whenever any person is detained by or is in the custody of an arresting officer for a violation of any county, city, or town ordinance or of any provision of this Code, punishable as a Class 3 or Class 4 misdemeanor or any other misdemeanor for which he cannot receive a jail sentence, except as otherwise provided in Title 46.2, or to the offense of public drunkenness as defined in § 18.2-388, 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 of 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 act, the officer may proceed according to the provisions of § 19.2-82.

3. Any person so summoned shall not be held in custody after the issuance of such summons for the purpose of complying with the requirements of Chapter 23 (§ 19.2-387 et seq.) of this title. Reports to the Central Criminal Records Exchange concerning such persons shall be made after a disposition of guilt is entered as provided for in § 19.2-390.

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

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

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

B. Special policemen of the counties as provided in § 15.2-1737, special policemen or conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) of this title and special policemen appointed by authority of a city's charter may issue summonses pursuant to this section, if such officers are in uniform, or displaying a badge of office. On application, the chief law-enforcement officer of the county or city shall supply each officer with a supply of summons forms, for which such officer shall account pursuant to regulation of such chief law-enforcement officer.

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

§ 19.2-81. Arrest without warrant authorized in certain cases.

59 A. The following officers shall have the powers of arrest as provided in this section:
60 1. Members of the State Police force of the Commonwealth;
61 2. Sheriffs of the various counties and cities, and their deputies;
62 3. Members of any county police force or any duly constituted police force of any city or town of
63 the Commonwealth;
64 4. The Commissioner, members and employees of the Marine Resources Commission granted the
65 power of arrest pursuant to § 28.2-900;
66 5. Regular conservation police officers appointed pursuant to § 29.1-200;
67 6. United States Coast Guard and United States Coast Guard Reserve commissioned, warrant, and
68 petty officers authorized under § 29.1-205 to make arrests;
69 7. The special policemen of the counties as provided by § 15.2-1737, provided such officers are in
70 uniform, or displaying a badge of office;
71 8. Conservation officers appointed pursuant to § 10.1-115; and
72 9. Full-time sworn members of the enforcement division of the Department of Motor Vehicles
73 appointed pursuant to § 46.2-217.

74 B. Such officers may arrest, without a warrant, any person who commits any crime in the presence
75 of the officer and any person whom he has reasonable grounds or probable cause to suspect of having
76 committed a felony not in his presence.

77 ~~Any such officer may arrest without a warrant any person whom the officer has probable cause to~~
78 ~~suspect of operating a watercraft or motor boat (i) while intoxicated in violation of subsection B of~~
79 ~~§ 29.1-738 or (ii) in violation of an order issued pursuant to § 29.1-738.4, in his presence, and may~~
80 ~~thereafter transfer custody of the person suspected of the violation to another officer, who may obtain a~~
81 ~~warrant based upon statements made to him by the arresting officer.~~

82 C. Any such officer may, at the scene of any accident involving a motor vehicle, watercraft as
83 defined in § 29.1-712 or motorboat, or at any hospital or medical facility to which any person involved
84 in such accident has been transported, or in the apprehension of any person charged with the theft of
85 any motor vehicle, on any of the highways or waters of the Commonwealth, upon reasonable grounds to
86 believe, based upon personal investigation, including information obtained from eyewitnesses, that a
87 crime has been committed by any person then and there present, apprehend such person without a
88 warrant of arrest. For purposes of this section, "the scene of any accident" shall include a reasonable
89 location where a vehicle or person involved in an accident has been moved at the direction of a
90 law-enforcement officer to facilitate the clearing of the highway or to ensure the safety of the motoring
91 public.

92 D. In addition, such officer may, ~~within three hours of the occurrence of any such accident involving~~
93 ~~a motor vehicle, arrest without a warrant at any location any person whom the officer has probable~~
94 ~~cause to suspect of driving or operating such a motor vehicle, watercraft or motorboat while (i)~~
95 ~~intoxicated in violation of § 18.2-266, 18.2-266.1, or 46.2-341.24, or subsection B of § 29.1-738; (ii) in~~
96 ~~violation of § 18.2-272 or subdivision D 1 of § 46.2-391 or in violation of an order issued pursuant to~~
97 ~~§ 29.1-738.4; or (iii) in violation of a substantially similar ordinance of any county, city, or town in the~~
98 ~~Commonwealth, whether or not those offenses were committed in such officer's presence.~~

99 E. Such officers may arrest, without a warrant or a capias, persons duly charged with a crime in
100 another jurisdiction upon receipt of a photocopy of a warrant or a capias, telegram, computer printout,
101 facsimile printout, a radio, telephone or teletype message, in which photocopy of a warrant, telegram,
102 computer printout, facsimile printout, radio, telephone or teletype message shall be given the name or a
103 reasonably accurate description of such person wanted and the crime alleged.

104 F. Such officers may arrest, without a warrant or a capias, for an alleged misdemeanor not
105 committed in his presence when the officer receives a radio message from his department or other
106 law-enforcement agency within the Commonwealth that a warrant or capias for such offense is on file.

107 G. Such officers may also arrest without a warrant for an alleged misdemeanor not committed in
108 their presence involving (i) shoplifting in violation of § 18.2-96 or 18.2-103 or a similar local ordinance,
109 (ii) carrying a weapon on school property in violation of § 18.2-308.1, (iii) assault and battery, (iv)
110 brandishing a firearm in violation of § 18.2-282, or (v) destruction of property in violation of
111 § 18.2-137, when such property is located on premises used for business or commercial purposes, or a
112 similar local ordinance, when any such arrest is based on probable cause upon reasonable complaint of
113 the person who observed the alleged offense. The arresting officer may issue a summons to any person
114 arrested under this section for a misdemeanor violation involving shoplifting.