

# VIRGINIA ACTS OF ASSEMBLY -- 2021 SPECIAL SESSION I

## CHAPTER 338

*An Act to amend and reenact §§ 46.2-936 and 46.2-940 of the Code of Virginia, relating to promises to appear after the issuance of a summons.*

[S 1329]

Approved March 24, 2021

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

**1. That §§ 46.2-936 and 46.2-940 of the Code of Virginia are amended and reenacted as follows:**

**§ 46.2-936. Arrest for misdemeanor; release on summons; right to demand hearing immediately or within 24 hours; issuance of warrant on request of officer for violations of §§ 46.2-301 and 46.2-302; violations.**

Whenever any person is detained by or in the custody of an arresting officer, including an arrest on a warrant for a violation of any provision of this title punishable as a misdemeanor, the arresting officer shall, except as otherwise provided in § 46.2-940, take the name and address of such person and the license number of his motor vehicle 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. Such time shall be at least five days after such arrest unless the person arrested demands an earlier hearing. Such person shall, if he so desires, have a right to an immediate hearing, or a hearing within ~~twenty-four~~ 24 hours at a convenient hour, before a court having jurisdiction under this title within the county, city, or town wherein such offense was committed. 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.

Notwithstanding the foregoing provisions of this section, if prior general approval has been granted by order of the general district court for the use of this section in cases involving violations of §§ 46.2-301 and 46.2-302, the arresting officer may take the person before the appropriate judicial officer of the county or city in which the violation occurred and make oath as to the offense and request issuance of a warrant. If a warrant is issued, the judicial officer shall proceed in accordance with the provisions of Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2.

Notwithstanding any other provision of this section, in cases involving a violation of § 46.2-341.24 or § 46.2-341.31, the arresting officer shall take the person before a magistrate as provided in §§ 46.2-341.26:2 and 46.2-341.26:3. The magistrate may issue either a summons or a warrant as he shall deem proper.

~~Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting officer before a magistrate or other issuing officer having jurisdiction who shall proceed according to the provisions of § 46.2-940. If any person refuses to give such written promise to appear under the provisions of this section, the arresting officer shall give such person notice of the time and place of the hearing, note such person's refusal to give his written promise to appear on the summons, and forthwith release him from custody.~~

Any person who willfully violates his written promise to appear or fails to appear, ~~given at the time and place specified in such summons or notice issued in accordance with this section,~~ shall be treated in accordance with the provisions of § 46.2-938.

Any officer violating any of the provisions of this section shall be guilty of misconduct in office and subject to removal therefrom upon complaint filed by any person in a court of competent jurisdiction. This section shall not be construed to limit the removal of a law-enforcement officer for other misconduct in office.

**§ 46.2-940. When arresting officer shall take person before issuing authority.**

If any person is: (i) believed by the arresting officer to have committed a felony; or (ii) believed by the arresting officer to be likely to disregard a summons issued under § 46.2-936; ~~or (iii) refuses to give a written promise to appear under the provisions of § 46.2-936,~~ the arresting officer shall promptly take him before a magistrate or other issuing authority having jurisdiction and proceed in accordance with the provisions of § 19.2-82. The magistrate or other authority may issue either a summons or warrant as he shall determine proper.