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HOUSE BILL NO. 1029
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee for Courts of Justice
on _____)

(Patrons Prior to Substitute—Delegates Walker and Zehr [HB 687])

A BILL to amend and reenact §§ 19.2-72, 19.2-74, 19.2-76, and 19.2-76.2 of the Code of Virginia, relating to criminal complaint, warrant, summons, etc.; temporary sealing.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-72, 19.2-74, 19.2-76, and 19.2-76.2 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-72. When it may issue; what to recite and require.

On complaint of a criminal offense to any officer authorized to issue criminal warrants he shall examine on oath the complainant and any other witnesses, or when such officer shall suspect that an offense punishable otherwise than by a fine has been committed he may, without formal complaint, issue a summons for witnesses and shall examine such witnesses. A written complaint shall be required if the complainant is not a law-enforcement officer; however a written complaint is required for a felony offense, regardless of whether the complainant is a law-enforcement officer. If no arrest warrant is issued in response to a written complaint made by such complainant, the written complaint shall be returned to the complainant. If upon such examination such officer finds that there is probable cause to believe the accused has committed an offense, such officer shall issue a warrant for his arrest, except that no magistrate may issue an arrest warrant for a felony offense upon the basis of a complaint by a person other than a law-enforcement officer or an animal control officer without prior authorization by the attorney for the Commonwealth or by a law-enforcement agency having jurisdiction over the alleged offense. The warrant shall (i) be directed to an appropriate officer or officers, (ii) name the accused or, if his name is unknown, set forth a description by which he can be identified with reasonable certainty, (iii) describe the offense charged with reasonable certainty, (iv) command that the accused be arrested and brought before a court of appropriate jurisdiction in the county, city or town in which the offense was allegedly committed, and (v) be signed by the issuing officer. If a warrant is issued for an offense in violation of any county, city, or town ordinance that is similar to any provision of this Code, the warrant shall reference the offense using both the citation corresponding to the county, city, or town ordinance and the specific provision of this Code. The warrant shall require the officer to whom it is directed to summon such witnesses as shall be therein named to appear and give evidence on the examination. But in a city or town having a police force, the warrant shall be directed "To

33 any policeman, sheriff or his deputy sheriff of such city (or town)," and shall be executed by the policeman,
34 sheriff or his deputy sheriff into whose hands it shall come or be delivered. A sheriff or his deputy may
35 execute an arrest warrant throughout the county in which he serves and in any city or town surrounded
36 thereby and effect an arrest in any city or town surrounded thereby as a result of a criminal act committed
37 during the execution of such warrant. A jail officer as defined in § 53.1-1 employed at a regional jail or jail
38 farm is authorized to execute a warrant of arrest upon an accused in his jail. The venue for the prosecution of
39 such criminal act shall be the jurisdiction in which the offense occurred.

40 *Any complaint that accompanies a warrant issued pursuant to this section may be temporarily sealed for*
41 *a specific period of time commencing upon (a) filing of such warrant and complaint in the appropriate court*
42 *and (b) application of the attorney for the Commonwealth for good cause shown in an ex parte hearing. Any*
43 *individual arrested on or served with such warrant may move the appropriate court for the unsealing of such*
44 *complaint. The burden of proof with respect to continued sealing shall be upon the Commonwealth.*

45 **§ 19.2-74. Issuance and service of summons in place of warrant in misdemeanor case; issuance of**
46 **summons by special conservators of the peace.**

47 A. 1. Whenever any person is detained by or is in the custody of an arresting officer for any violation
48 committed in such officer's presence which offense is a violation of any county, city or town ordinance or of
49 any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other misdemeanor for
50 which he may receive a jail sentence, except as otherwise provided in Title 46.2, or for offenses listed in
51 subsection D of § 19.2-81, or an arrest on a warrant charging an offense for which a summons may be issued,
52 and when specifically authorized by the judicial officer issuing the warrant, the arresting officer shall take the
53 name and address of such person and issue a summons or otherwise notify him in writing to appear at a time
54 and place to be specified in such summons or notice. Upon the giving by such person of his written promise
55 to appear at such time and place, the officer shall forthwith release him from custody. However, if any such
56 person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions
57 of § 19.2-82.

58 Anything in this section to the contrary notwithstanding, if any person is believed by the arresting officer
59 to be likely to disregard a summons issued under the provisions of this subsection, or if any person is
60 reasonably believed by the arresting officer to be likely to cause harm to himself or to any other person, a
61 magistrate or other issuing authority having jurisdiction shall proceed according to the provisions of
62 § 19.2-82.

63 2. Whenever any person is detained by or is in the custody of an arresting officer for a violation of any

64 county, city, or town ordinance or of any provision of this Code, punishable as a Class 3 or Class 4
65 misdemeanor or any other misdemeanor for which he cannot receive a jail sentence, except as otherwise
66 provided in Title 46.2, or to the offense of public drunkenness as defined in § 18.2-388, the arresting officer
67 shall take the name and address of such person and issue a summons or otherwise notify him in writing to
68 appear at a time and place to be specified in such summons or notice. Upon the giving of such person of his
69 written promise to appear at such time and place, the officer shall forthwith release him from custody.
70 However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed
71 according to the provisions of § 19.2-82.

72 3. Unless otherwise authorized by law, any person so summoned shall not be held in custody after the
73 issuance of such summons for the purpose of complying with the requirements of Chapter 23 (§ 19.2-387 et
74 seq.). Reports to the Central Criminal Records Exchange concerning such persons shall be made pursuant to
75 subdivision A 2 of § 19.2-390 and subsection C of § 19.2-390.

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

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

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

84 B. Conservators of the peace appointed under Chapter 2 (§ 19.2-12 et seq.) may issue summonses
85 pursuant to this section, if such officers are in uniform or displaying a badge of office. On application, the
86 chief law-enforcement officer of the county or city shall supply each officer with a supply of summons forms,
87 for which such officer shall account pursuant to regulation of such chief law-enforcement officer.

88 C. The summons used by a law-enforcement officer pursuant to this section shall be in form the same as
89 the uniform summons for motor vehicle law violations as prescribed pursuant to § 46.2-388. If the summons
90 is issued for an offense in violation of any county, city, or town ordinance that is similar to any provision of
91 this Code, the summons shall reference the offense using both the citation corresponding to the county, city,
92 or town ordinance and the specific provision of this Code.

93 *D. Any complaint that accompanies any warrant or summons issued pursuant to this section may be*
94 *temporarily sealed for a specific period of time commencing upon (i) filing of such warrant or summons and*

95 *complaint in the appropriate court and (ii) application of the attorney for the Commonwealth for good cause*
96 *shown in an ex parte hearing. Any individual arrested on or served with such warrant or summons may move*
97 *the appropriate court for the unsealing of such complaint. The burden of proof with respect to continued*
98 *sealing shall be upon the Commonwealth.*

99 **§ 19.2-76. Execution and return of warrant, capias or summons; arrest outside county or city where**
100 **charge is to be tried.**

101 A law-enforcement officer may execute within his jurisdiction a warrant, capias, or summons issued
102 anywhere in the Commonwealth. A jail officer, as defined in § 53.1-1, employed at a regional jail or jail farm
103 may execute upon a person being held in his jail a warrant, capias, or summons issued anywhere in the
104 Commonwealth. A warrant or capias shall be executed by the arrest of the accused, and a summons shall be
105 executed by delivering a copy to the accused personally.

106 If the accused is a corporation, partnership, unincorporated association, or legal entity other than an
107 individual, a summons may be executed by service on the entity in the same manner as provided in Title 8.01
108 for service of process on that entity in a civil proceeding. However, if the summons is served on the entity by
109 delivery to a registered agent or to any other agent who is not an officer, director, managing agent, or
110 employee of the entity, such agent shall not be personally subject to penalty for failure to appear as provided
111 in § 19.2-128, nor shall the agent be subject to punishment for contempt for failure to appear under his
112 summons as provided in § 19.2-129.

113 The law-enforcement officer or jail officer executing a warrant or capias shall endorse the date of
114 execution thereon and make return thereof to a judicial officer. The law-enforcement officer executing a
115 summons shall endorse the date of execution thereon and make return thereof to the court to which the
116 summons is returnable.

117 Whenever a person is arrested upon a warrant or capias in a county or city other than that in which the
118 charge is to be tried, the law-enforcement officer or jail officer making the arrest shall either (i) bring the
119 accused forthwith before a judicial officer in the locality where the arrest was made or where the charge is to
120 be tried or (ii) commit the accused to the custody of an officer from the county or city where the charge is to
121 be tried who shall bring the accused forthwith before a judicial officer in the county or city in which the
122 charge is to be tried. The judicial officer before whom the accused is brought shall immediately conduct a
123 bail hearing and either admit the accused to bail or commit him to jail for transfer forthwith to the county or
124 city where the charge is to be tried.

125 *Any complaint that accompanies any warrant, summons, or capias issued pursuant to this section may be*
126 *temporarily sealed for a specific period of time commencing upon (a) filing of such warrant, summons, or*
127 *capias and complaint to the appropriate court and (b) application of the attorney for the Commonwealth for*
128 *good cause shown in an ex parte hearing. Any individual arrested on or served with such warrant, summons,*
129 *or capias may move the appropriate court for the unsealing of such complaint. The burden of proof with*
130 *respect to continued sealing shall be upon the Commonwealth.*

131 **§ 19.2-76.2. Mailing of summons in certain cases.**

132 Notwithstanding the provisions of § 19.2-76, whenever a summons for a violation of a county, city, or
133 town parking ordinance is served in any county, city, or town it may be executed by mailing by first-class
134 mail a copy thereof to the address of the owner of the vehicle as shown on the records of the Department of
135 Motor Vehicles. In addition, whenever a summons for a violation of a county, city, or town trash ordinance
136 punishable as a misdemeanor under § 15.2-901 is served in any county, city, or town, it may be executed by
137 mailing a copy by first-class mail to the person who occupies the subject premises. If the person fail to appear
138 on the date of return set out in the summons mailed pursuant to this section, the summons shall be executed in
139 the manner set out in § 19.2-76.3 of this Code.

140 No proceedings for contempt or arrest of a person summoned by mailing shall be instituted for his failure
141 to appear on the return date of the summons.

142 *Any complaint that accompanies any summons issued pursuant to this section may be temporarily sealed*
143 *for a specific period of time commencing upon (i) filing of such summons and complaint in the appropriate*
144 *court and (ii) application of the attorney for the Commonwealth for good cause shown in an ex parte hearing.*
145 *Any individual arrested on or served with such summons may move the appropriate court for the unsealing of*
146 *such complaint. The burden of proof with respect to continued sealing shall be upon the Commonwealth.*