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SENATE BILL NO. 283
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee for Courts of Justice
on _____)
(Patron Prior to Substitute—Senator Aird)

A BILL to amend and reenact §§ 18.2-456 and 19.2-128 of the Code of Virginia, relating to penalties for failure to appear; contempt.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-456 and 19.2-128 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-456. Cases in which courts and judges may punish summarily for contempt.

A. The courts and judges may issue attachments for contempt, and punish them summarily, only in the following cases:

1. Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration of justice;

2. Violence, or threats of violence, to a judge or officer of the court, or to a juror, witness, or party going to, attending, or returning from the court, for or in respect of any act or proceeding had, or to be had, in such court;

3. Vile, contemptuous, or insulting language addressed to or published of a judge for or in respect of any act or proceeding had, or to be had, in such court, or like language used in his presence and intended for his hearing for or in respect of such act or proceeding;

4. Misbehavior of an officer of the court in his official character;

5. Disobedience or resistance of an officer of the court, juror, witness, or other person to any lawful process, judgment, decree, or order of the court; and

6. Willful failure to appear before any court or judicial officer as required after having been charged with a felony offense or misdemeanor offense or released on a summons pursuant to § 19.2-73 or 19.2-74. *In determining a willful failure to appear pursuant to this subdivision, the court shall consider mitigating circumstances, including those circumstances listed in subsection C of § 19.2-128.*

B. The judge shall indicate, in writing, under which subdivision in subsection A a person is being charged and punished for contempt.

C. Nothing in subdivision A 6 shall be construed to prohibit prosecution under § 19.2-128. The provisions

31 of subdivision A 6 shall not apply to any person who is (i) incarcerated in any correctional facility or (ii) (a)
32 detained in any state or federal facility or (b) in the custody of a law-enforcement officer at the time such
33 person is required to appear before any court or judicial officer.

34 **§ 19.2-128. Penalties for failure to appear.**

35 A. Whoever, having been released pursuant to this chapter or § 19.2-319 or on a summons pursuant to
36 § 19.2-73 or 19.2-74, willfully fails to appear before any court or judicial officer as required, shall, after
37 notice to all interested parties, incur a forfeiture of any security that may have been given or pledged for his
38 release, unless one of the parties can show good cause for excusing the absence, or unless the court, in its
39 sound discretion, shall determine that neither the interests of justice nor the power of the court to conduct
40 orderly proceedings will be served by such forfeiture. *As used in this subsection, "willfully fails to appear"*
41 *means intentional conduct with a purpose to avoid the judicial process. Isolated instances of nonappearance*
42 *in court are not alone evidence of the risk of willful failure to appear; however, reoccurrence and patterns of*
43 *intentional conduct to evade prosecution may be considered factors in assessing future intent to evade*
44 *prosecution. In determining whether a nonappearance was willful, the court shall consider mitigating*
45 *circumstances, including (i) an illness, an injury, or any other unforeseen medical condition; (ii) unforeseen*
46 *transportation problems; (iii) an inability to obtain adequate dependent care; and (iv) any affirmative steps*
47 *taken by a person to communicate or remedy his failure to appear before any court or judicial officer as*
48 *required.*

49 B. Any person (i) charged with a felony *or misdemeanor* offense or (ii) convicted of a felony *or*
50 *misdemeanor* offense and execution of sentence is suspended pursuant to § 19.2-319 who willfully fails to
51 appear before any court as required is guilty of a ~~Class 6 felony~~ *misdemeanor punishable by no more than 30*
52 *days in jail.*

53 C. ~~Any person (i) charged with a misdemeanor offense or (ii) convicted of a misdemeanor offense and~~
54 ~~execution of sentence is suspended pursuant to § 19.2-319 who willfully fails to appear before any court as~~
55 ~~required is guilty of a Class 1 misdemeanor.~~ *If a person fails to appear for a preliminary hearing or trial*
56 *after having been served with a warrant or indictment for a felony offense described in § 19.2-297.1, the*
57 *Commonwealth may charge him by warrant or indictment with a Class 6 felony offense under this section*
58 *using the following procedures:*

59 *1. After indictment, the Commonwealth shall file a motion for a hearing pursuant to this subsection within*
60 *30 days of indictment. Such hearing shall take place at least 30 days prior to the trial on the felony under this*
61 *section.*

62 2. *At such hearing, the Commonwealth shall establish by a preponderance of the evidence that (i) a*
63 *material witness necessary for trial is no longer available due to the delay in the case proceeding to trial*
64 *caused by the accused's failure to appear; (ii) items, documents, videos, or other tangible evidence has been*
65 *lost, destroyed, or is otherwise unavailable due to the delay caused by the accused's failure to appear; or (iii)*
66 *the accused's failure to appear has created a circumstance that creates an undue hardship in the*
67 *Commonwealth's ability to present its case at trial.*

68 3. *If the court finds that the Commonwealth has failed to satisfy its burden at such a hearing, it shall*
69 *dismiss the indictment for felony failure to appear with prejudice. The Commonwealth may proceed to trial*
70 *on the felony for which the accused failed to appear if it so chooses.*

71 4. *If the court finds that the Commonwealth has met its burden, the case may proceed to trial on the*
72 *indictment. If the Commonwealth elects to proceed on a felony failure to appear pursuant to this section and*
73 *proceeds to trial on the felony failure to appear after a hearing, the court shall dismiss the charges for which*
74 *the accused failed to appear with prejudice. The accused may not be convicted for felony failure to appear*
75 *pursuant to this section and the offense for which he is alleged to have failed to appear.*

76 5. *At trial, the Commonwealth must prove the person who was released pursuant to this chapter or*
77 *§ 19.2-319 willfully failed to appear before any court or judicial officer as required.*

78 D. *The provisions of this section shall not apply to any person who is (i) incarcerated in any correctional*
79 *facility or (ii) (a) detained in any state or federal facility or (b) in the custody of a law-enforcement officer at*
80 *the time such person is required to appear before any court or judicial officer.*