

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 18.2-456 and 19.2-128 of the Code of Virginia, relating to penalties for*
 3 *failure to appear; contempt.*

4 [H 933]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That §§ 18.2-456 and 19.2-128 of the Code of Virginia are amended and reenacted as follows:**8 **§ 18.2-456. Cases in which courts and judges may punish summarily for contempt.**9 A. The courts and judges may issue attachments for contempt, and punish them summarily, only in the
 10 following cases:11 1. Misbehavior in the presence of the court, or so near thereto as to obstruct or interrupt the administration
 12 of justice;13 2. Violence, or threats of violence, to a judge or officer of the court, or to a juror, witness, or party going
 14 to, attending, or returning from the court, for or in respect of any act or proceeding had, or to be had, in such
 15 court;16 3. Vile, contemptuous, or insulting language addressed to or published of a judge for or in respect of any
 17 act or proceeding had, or to be had, in such court, or like language used in his presence and intended for his
 18 hearing for or in respect of such act or proceeding;

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

20 5. Disobedience or resistance of an officer of the court, juror, witness, or other person to any lawful
 21 process, judgment, decree, or order of the court; and22 6. Willful failure to appear before any court or judicial officer as required after having been charged with
 23 a felony offense or misdemeanor offense or released on a summons pursuant to § 19.2-73 or 19.2-74. *In*
 24 *determining whether a failure to appear was willful pursuant to this subdivision, the court shall consider*
 25 *mitigating circumstances, including those circumstances listed in subsection A of § 19.2-128.*26 B. The judge shall indicate, in writing, under which subdivision in subsection A a person is being charged
 27 and punished for contempt.28 C. Nothing in subdivision A 6 shall be construed to prohibit prosecution under § 19.2-128. The provisions
 29 of subdivision A 6 shall not apply to any person who is (i) incarcerated in any correctional facility or (ii) (a)
 30 detained in any state or federal facility or (b) in the custody of a law-enforcement officer at the time such
 31 person is required to appear before any court or judicial officer.32 **§ 19.2-128. Penalties for failure to appear.**33 A. Whoever, having been released pursuant to this chapter or § 19.2-319 or on a summons pursuant to
 34 § 19.2-73 or 19.2-74, willfully fails to appear before any court or judicial officer as required, shall, after
 35 notice to all interested parties, incur a forfeiture of any security that may have been given or pledged for his
 36 release, unless one of the parties can show good cause for excusing the absence, or unless the court, in its
 37 sound discretion, shall determine that neither the interests of justice nor the power of the court to conduct
 38 orderly proceedings will be served by such forfeiture. *As used in this subsection, "willfully fails to appear"*
 39 *means intentional conduct for the purpose of avoiding the judicial process. Prior isolated instances of*
 40 *nonappearance, including convictions based on such nonappearance, are not evidence that a failure to*
 41 *appear was willful; however, a prior pattern of recurrent and purposeful conduct to evade prosecution may*
 42 *be considered factors in assessing willfulness. In determining whether a nonappearance was willful, the court*
 43 *shall consider mitigating circumstances, including (i) an illness, an injury, or any other unforeseen medical*
 44 *condition; (ii) unforeseen transportation problems; (iii) an inability to obtain adequate dependent care; and*
 45 *(iv) any affirmative steps taken by a person to communicate or remedy his failure to appear before any court*
 46 *or judicial officer as required.*47 B. Any person (i) charged with a felony offense or (ii) convicted of a felony offense and execution of
 48 sentence is suspended pursuant to § 19.2-319 who willfully fails to appear before any court as required is
 49 guilty of a Class 6 felony.50 C. Any person (i) charged with a misdemeanor offense or (ii) convicted of a misdemeanor offense and
 51 execution of sentence is suspended pursuant to § 19.2-319 who willfully fails to appear before any court as
 52 required is guilty of a Class 1 misdemeanor.53 D. The provisions of this section shall not apply to any person who is (i) incarcerated in any correctional
 54 facility or (ii) (a) detained in any state or federal facility or (b) in the custody of a law-enforcement officer at
 55 the time such person is required to appear before any court or judicial officer.

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