

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

[S 283]

Approved

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 whether a failure to appear was willful pursuant to this subdivision, the court shall consider mitigating circumstances, including those circumstances listed in subsection A 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 of subdivision A 6 shall not apply to any person who is (i) incarcerated in any correctional facility or (ii) (a) detained in any state or federal facility or (b) in the custody of a law-enforcement officer at the time such person is required to appear before any court or judicial officer.

§ 19.2-128. Penalties for failure to appear.

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

B. Any person (i) charged with a felony offense or (ii) convicted of a felony offense and execution of sentence is suspended pursuant to § 19.2-319 who willfully fails to appear before any court as required is guilty of a Class 6 felony.

C. Any person (i) charged with a misdemeanor offense or (ii) convicted of a misdemeanor offense and execution of sentence is suspended pursuant to § 19.2-319 who willfully fails to appear before any court as required is guilty of a Class 1 misdemeanor.

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

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