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HOUSE BILL NO. 1533

Offered January 28, 2000

A BILL to amend and reenact §§ 19.2-123 and 19.2-143 of the Code of Virginia, relating to bail.

Patron—Davis

Consent to introduce

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 19.2-123 and 19.2-143 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-123. Release of accused on unsecured bond or promise to appear; conditions of release.

A. Any judicial officer may impose any one or any combination of the following conditions of release:

1. Place the person in the custody and supervision of a designated person, organization or pretrial services agency which, for the purposes of this section, shall not include a court services unit established pursuant to § 16.1-233;

2. Place restrictions on the travel, association or place of abode of the person during the period of release and restrict contacts with household members for a period not to exceed seventy-two hours;

2a. Require the execution of an unsecured bond; *however, if the judicial officer finds that the person arrested has previously been convicted of a felony or is presently on bond in any jurisdiction or is on probation or parole, the person may be released only upon a secure bond;*

3. Require the execution of a secure bond which at the option of the accused shall be satisfied with sufficient solvent sureties, or the deposit of cash in lieu thereof. Only the actual value of any interest in real estate or personal property owned by the proposed surety shall be considered in determining solvency and solvency shall be found if the value of the proposed surety's equity in the real estate or personal property equals or exceeds the amount of the bond;

3a. Require that the person do any or all of the following: (i) maintain employment or, if unemployed, actively seek employment; (ii) maintain or commence an educational program; (iii) avoid all contact with an alleged victim of the crime and with any potential witness who may testify concerning the offense; (iv) comply with a specified curfew; (v) refrain from possessing a firearm, destructive device, or other dangerous weapon; (vi) refrain from excessive use of alcohol, or use of any illegal drug or any controlled substance not prescribed by a health care provider; and (vii) submit to testing for drugs and alcohol until the final disposition of his case; or

4. Impose any other condition deemed reasonably necessary to assure appearance as required, and to assure his good behavior pending trial, including a condition requiring that the person return to custody after specified hours or be placed on home electronic incarceration pursuant to § 53.1-131.2.

Upon satisfaction of the terms of recognizance, the accused shall be released forthwith.

In addition, where the accused is a resident of a state training center for the mentally retarded, the judicial officer may place the person in the custody of the director of the state facility, if the director agrees to accept custody. Such director is hereby authorized to take custody of such person and to maintain him at the training center prior to a trial or hearing under such circumstances as will reasonably assure the appearance of the accused for the trial or hearing.

B. In any jurisdiction served by a pretrial services agency which offers a drug testing program approved for the purposes of this subsection by the chief general district court judge, any such person charged with a crime may be requested by such agency to give voluntarily a urine sample. This sample may be analyzed for the presence of phencyclidine (PCP), barbiturates, cocaine, opiates or such other drugs as the agency may deem appropriate prior to any hearing to establish bail. The judicial officer and agency shall inform the accused or juvenile being tested that test results shall be used by a judicial officer only at a bail hearing and only to determine appropriate conditions of release or to reconsider the conditions of bail at a subsequent hearing. All test results shall be confidential with access thereto limited to judicial officers, the attorney for the Commonwealth, defense counsel and, in cases where a juvenile is tested, the parents or legal guardian or custodian of such juvenile. However, in no event shall the judicial officer have access to any test result prior to making a bail release determination or to determining the amount of bond, if any. Following this determination, the judicial officer shall consider the test results and the testing agency's report and accompanying recommendations, if any, in setting appropriate conditions of release. In no event shall a decision regarding a release determination be subject to reversal on the sole basis of such test results. Any accused or juvenile whose urine sample

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60 has tested positive for such drugs and who is admitted to bail may, as a condition of release, be ordered
61 to refrain from use of alcohol or illegal drugs and may be required to be tested on a periodic basis until
62 final disposition of his case to ensure his compliance with the order. Sanctions for a violation of any
63 condition of release, which violations shall include subsequent positive drug test results or failure to
64 report as ordered for testing, may be imposed in the discretion of the judicial officer and may include
65 imposition of more stringent conditions of release, contempt of court proceedings or revocation of
66 release. Any test given under the provisions of this subsection which yields a positive drug test result
67 shall be reconfirmed by a second test if the person tested denies or contests the initial drug test positive
68 result. The results of any drug test conducted pursuant to this subsection shall not be admissible in any
69 judicial proceeding other than for the imposition of sanctions for a violation of a condition of release.

70 C. [Repealed.]

71 D. Nothing in this section shall be construed to prevent an officer taking a juvenile into custody
72 from releasing that juvenile pursuant to § 16.1-247. If any condition of release imposed under the
73 provisions of this section is violated, a judicial officer may issue a *capias* or order to show cause why
74 the recognizance should not be revoked.

75 § 19.2-143. Where default recorded; process on recognizance; forfeiture on recognizance; when copy
76 may be used; cash bond.

77 When a person, under recognizance in a case, either as party or witness, fails to perform the
78 condition of appearance thereof, if it is to appear before a court of record, or a district court, a hearing
79 shall be held upon reasonable notice to all parties affording them opportunity to show cause why the
80 recognizance or any part thereof should not be forfeited. *The show cause notice shall be issued within*
81 *ninety days of the breach of the condition of appearance, and if not issued within that time, any surety*
82 *on the recognizance shall be released from liability.*

83 If the court finds the recognizance or any part thereof should be forfeited, the default shall be
84 recorded therein, unless, the defendant or juvenile is brought before the court within sixty days of the
85 findings of default. After sixty days of the finding of default, his default shall be recorded therein, and
86 if it is to appear before a district court, his default shall be entered by the judge of such court, on the
87 page of his docket whereon the case is docketed unless the defendant or juvenile has been delivered or
88 appeared before the court. The process on any such forfeited recognizance shall be issued from the court
89 before which the appearance was to be, and wherein such forfeiture was recorded or entered. Any such
90 process issued by a judge when the penalty of the recognizance so forfeited is in excess of the
91 maximum jurisdictional amount specified in § 16.1-77 (1) shall be made returnable to the circuit court of
92 his county or city, and when not in excess of such amount it shall be made returnable before, and tried
93 by, such judge, who shall promptly transmit to the clerk of the circuit court of his county or city
94 wherein deeds are recorded an abstract of such judgment as he may render thereon, which shall be
95 forthwith docketed by the clerk of such court.

96 If the defendant or juvenile appears before or is delivered to the court within twelve months of the
97 findings of default, the court shall remit any bond previously ordered forfeited by the courts, less such
98 costs as the court may direct.

99 If it is brought to the attention of the court that the defendant or juvenile is incarcerated in another
100 state or country within twelve months of the finding of default, thereby preventing his delivery or
101 appearance within that period, the court shall remit any bond previously ordered forfeited. If the
102 defendant or juvenile left the Commonwealth with the permission of the court, the bond shall be
103 remitted without deduction of costs; otherwise, the cost of returning him to the Commonwealth shall be
104 deducted from the bond.

105 Evidence that the defendant or juvenile is incarcerated or subject to court process in another
106 jurisdiction on the day his appearance is required or a medical certificate from a duly licensed physician
107 that the defendant was physically unable to so appear shall be considered evidence of good cause why
108 the recognizance should not be forfeited.

109 If such recognizance so forfeited is not for such appearance, process thereon shall be issued from the
110 court in which it was taken, or the court to which it was made returnable, and in a proceeding in one
111 court on a recognizance entered in another a copy thereof shall be evidence in like manner as the
112 original would be if it had been entered in the court wherein the proceeding is being had thereon.

113 However, when any defendant or juvenile who posted a cash bond and failed to appear is tried in his
114 absence and is convicted, the court or judge trying the case shall first apply the cash bond, or so much
115 thereof as may be necessary, to the payment of any fines or costs, or both, adjudged against the
116 defendant or juvenile or imposed by law. Any remaining funds shall be forfeited without further notice.
117 However, if a rehearing is granted, the court may remit part or all of such cash bond not applied
118 ultimately to fines or costs, and order a refund of the same by the State Treasurer, but only if good
119 cause is shown.

120 If the defendant or juvenile posted a cash bond and failed to appear, but is not tried in his absence,
121 the bond shall be forfeited promptly without further notice. However, if the defendant or juvenile

122 appears in court within sixty days after the bond is forfeited, the judge may remit part or all of any
123 bond previously forfeited and order a refund of the same by the State Treasurer.

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