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HOUSE BILL NO. 570**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee for Courts of Justice
on February 23, 2004)

(Patron Prior to Substitute—Delegate Albo)

A *BILL to amend and reenact §§ 19.2-82 and 19.2-120 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-81.6, relating to detention and arrest of illegal aliens and unidentified people.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-82 and 19.2-120 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-81.6 as follows:

§ 19.2-81.6. Authority of law-enforcement officers to detain illegal aliens.

Any law-enforcement officer, as defined in § 19.2-81, may, in the course of acting upon reasonable suspicion that an individual has committed or is committing a crime, detain the individual without a warrant upon receiving confirmation from the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security that the individual (i) is an alien illegally present in the United States, and (ii) has previously been convicted of a felony in the United States and deported or left the United States after such conviction. Any detention pursuant to this section shall be only for such period of time as may be required for the Bureau of Immigration and Customs Enforcement to take the individual into federal custody.

§ 19.2-82. Procedure upon arrest without warrant.

A person arrested without a warrant shall be brought forthwith before a magistrate or other issuing authority having jurisdiction who shall proceed to examine the officer making the arrest under oath. If the magistrate or other issuing authority having jurisdiction has lawful probable cause upon which to believe that a criminal offense has been committed, and that the person arrested has committed such offense, he shall issue either a warrant under the provisions of § 19.2-72 or a summons under the provisions of § 19.2-73.

As used in this section the term "brought before a magistrate or other issuing authority having jurisdiction" shall include a personal appearance before such authority or any two-way electronic video and audio communication meeting the requirements of § 19.2-3.1, in order that the accused and the arresting officer may simultaneously see and speak to such magistrate or authority. If electronic means are used, any documents filed may be transmitted in accordance with § 19.2-3.1.

If a warrant is issued the case shall thereafter be disposed of under the provisions of §§ 19.2-183 through 19.2-190, if the issuing officer is a judge; under the provisions of §§ 19.2-119 through 19.2-134, if the issuing officer is a magistrate or other issuing officer having jurisdiction.

If such warrant or summons is not issued, the person so arrested shall be released.

A warrant may be issued pursuant to this section, where the person has been detained in accordance with § 19.2-81.6, and shall recite that section and the applicable criminal violation of federal law previously confirmed with the Bureau of Immigration and Customs Enforcement. Upon being taken into federal custody, the state warrant shall be dismissed. Notwithstanding any other provision of law, a person may be detained in accordance with § 19.2-81.6 for a period of time not to exceed 72 hours or until the person is taken into federal custody, whichever occurs first.

§ 19.2-120. Admission to bail.

Prior to conducting any hearing on the issue of bail, release or detention, the judicial officer shall, to the extent feasible, obtain the person's criminal history.

A. A person who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to believe that:

1. He will not appear for trial or hearing or at such other time and place as may be directed, or

2. His liberty will constitute an unreasonable danger to himself or the public.

B. The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the public if the person is currently charged with:

1. An act of violence as defined in § 19.2-297.1;

2. An offense for which the maximum sentence is life imprisonment or death;

3. A violation of §§ 18.2-248, 18.2-248.01, 18.2-255 or § 18.2-255.2 involving a Schedule I or II controlled substance if (i) the maximum term of imprisonment is ~~ten~~ 10 years or more and the person was previously convicted of a like offense or (ii) the person was previously convicted as a "drug kingpin" as defined in § 18.2-248;

60 4. A violation of §§ 18.2-308.1, 18.2-308.2, or § 18.2-308.4 and which relates to a firearm and
61 provides for a minimum, mandatory sentence;

62 5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1
63 or 2, whether under the laws of this Commonwealth or substantially similar laws of the United States;

64 6. Any felony committed while the person is on release pending trial for a prior felony under federal
65 or state law or on release pending imposition or execution of sentence or appeal of sentence or
66 conviction;

67 7. An offense listed in subsection B of § 18.2-67.5:2 and the person had previously been convicted
68 of an offense listed in § 18.2-67.5:2 and the judicial officer finds probable cause to believe that the
69 person who is currently charged with one of these offenses committed the offense charged; or

70 8. A violation of § 18.2-46.5 or § 18.2-46.7.

71 C. *The judicial officer shall presume, subject to rebuttal, that no condition or combination of*
72 *conditions will reasonably assure the appearance of the person or the safety of the public if the person*
73 *is being detained pursuant to § 19.2-81.6.*

74 D. The court shall consider the following factors and such others as it deems appropriate in
75 determining, for the purpose of rebuttal of the presumption against bail described in subsection B,
76 whether there are conditions of release that will reasonably assure the appearance of the person as
77 required and the safety of the public:

78 1. The nature and circumstances of the offense charged;

79 2. The history and characteristics of the person, including his character, physical and mental
80 condition, family ties, employment, financial resources, length of residence in the community,
81 community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record
82 concerning appearance at court proceedings; and

83 3. The nature and seriousness of the danger to any person or the community that would be posed by
84 the person's release.

85 DE. The judicial officer shall inform the person of his right to appeal from the order denying bail or
86 fixing terms of bond or recognizance consistent with § 19.2-124.