041035772

1 **HOUSE BILL NO. 889**
2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
3 (Proposed by the Senate Committee for Courts of Justice
4 on March 3, 2004
5 (Patron Prior to Substitute—Delegate Bell)
6 *A BILL to amend and reenact § 19.2-120 of the Code of Virginia, relating to bail on charge of third*
7 *DUI.*
8 **Be it enacted by the General Assembly of Virginia:**
9 **1. That § 19.2-120 of the Code of Virginia is amended and reenacted as follows:**
10 § 19.2-120. Admission to bail.
11 Prior to conducting any hearing on the issue of bail, release or detention, the judicial officer shall, to
12 the extent feasible, obtain the person's criminal history.
13 A. A person who is held in custody pending trial or hearing for an offense, civil or criminal
14 contempt, or otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to
15 believe that:
16 1. He will not appear for trial or hearing or at such other time and place as may be directed, or
17 2. His liberty will constitute an unreasonable danger to himself or the public.
18 B. The judicial officer shall presume, subject to rebuttal, that no condition or combination of
19 conditions will reasonably assure the appearance of the person or the safety of the public if the person is
20 currently charged with:
21 1. An act of violence as defined in § 19.2-297.1;
22 2. An offense for which the maximum sentence is life imprisonment or death;
23 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
24 controlled substance if (i) the maximum term of imprisonment is ~~ten~~ *10* years or more and the person
25 was previously convicted of a like offense or (ii) the person was previously convicted as a "drug
26 kingpin" as defined in § 18.2-248;
27 4. A violation of §§ 18.2-308.1, 18.2-308.2, or § 18.2-308.4 and which relates to a firearm and
28 provides for a minimum, mandatory sentence;
29 5. Any felony, if the person has been convicted of two or more offenses described in subdivision 1
30 or 2, whether under the laws of this Commonwealth or substantially similar laws of the United States;
31 6. Any felony committed while the person is on release pending trial for a prior felony under federal
32 or state law or on release pending imposition or execution of sentence or appeal of sentence or
33 conviction;
34 7. An offense listed in subsection B of § 18.2-67.5:2 and the person had previously been convicted
35 of an offense listed in § 18.2-67.5:2 and the judicial officer finds probable cause to believe that the
36 person who is currently charged with one of these offenses committed the offense charged; ~~or~~
37 8. A violation of § 18.2-46.5 or § 18.2-46.7~~.~~*; or*
38 *9. A violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266 or § 46.2-341.24 and the person has, within the*
39 *past five years of the instant offense, been convicted three times on different dates of a violation of any*
40 *combination of these Code sections, or any ordinance of any county, city, or town or the laws of any*
41 *other state or of the United States substantially similar thereto, and has been at liberty between each*
42 *conviction.*
43 C. The court shall consider the following factors and such others as it deems appropriate in
44 determining, for the purpose of rebuttal of the presumption against bail described in subsection B,
45 whether there are conditions of release that will reasonably assure the appearance of the person as
46 required and the safety of the public:
47 1. The nature and circumstances of the offense charged;
48 2. The history and characteristics of the person, including his character, physical and mental
49 condition, family ties, employment, financial resources, length of residence in the community,
50 community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record
51 concerning appearance at court proceedings; and
52 3. The nature and seriousness of the danger to any person or the community that would be posed by
53 the person's release.
54 D. The judicial officer shall inform the person of his right to appeal from the order denying bail or
55 fixing terms of bond or recognizance consistent with § 19.2-124.