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SENATE BILL NO. 329

Offered January 14, 2004

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A BILL to amend and reenact §§ 19.2-120, 19.2-390, 46.2-391 and 46.2-391.2 of the Code of Virginia, relating to admission to bail.

Patrons—Stolle and Rerras

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-120, 19.2-390, 46.2-391 and 46.2-391.2 of the Code of Virginia are amended and reenacted as follows:

§ 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;

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

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

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

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

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

9. A violation of §§ 18.1-36.1, 18.2-51.4, 18.2-266, 18.2-266.1 or § 46.2-341.24 and the person previously has been convicted of a violation of one of these Code sections, or any ordinance of any county, city, or town or the laws of any other state or of the United States substantially similar thereto.

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

1. The nature and circumstances of the offense charged;

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

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

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

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks

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59 of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by
60 other agencies.

61 A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police
62 officials of cities and towns, and any other local law-enforcement officer or conservator of the peace
63 having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange,
64 on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or
65 service of process upon, any person on charges resulting from an indictment, presentment or
66 information, the arrest on capias or warrant for failure to appear, and the service of a warrant for
67 another jurisdiction, on any of the following charges:

68 a. Treason;

69 b. Any felony;

70 c. Any offense punishable as a misdemeanor under Title 54.1; or

71 d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, except an arrest
72 for a violation of § 18.2-119, ~~Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2~~, Article 2
73 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, or any similar ordinance of any county, city or town, or
74 (ii) under § 20-61.

75 The reports shall contain such information as is required by the Exchange and shall be accompanied
76 by fingerprints of the individual arrested. Fingerprint cards prepared by a law-enforcement agency for
77 inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the
78 appropriate bureau.

79 2. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall
80 not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the
81 conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court dismisses
82 the proceeding pursuant to § 18.2-251; or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2
83 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the
84 office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief
85 law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is
86 completed after a determination of guilt or acquittal by reason of insanity. The court shall require the
87 officer to complete the report immediately following the person's conviction or acquittal, and the
88 individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be
89 served by him or ordered him committed to the custody of the Commissioner of the Department of
90 Mental Health, Mental Retardation and Substance Abuse Services.

91 B. Within 72 hours following the receipt of (i) a warrant or capias for the arrest of any person on a
92 charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the
93 law-enforcement agency which received the warrant shall enter the person's name and other appropriate
94 information required by the Department of State Police into the "information systems" known as the
95 Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant
96 to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC),
97 maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of
98 birth, social security number and such other known information which the State Police or Federal
99 Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the
100 warrant or capias may transfer information electronically into VCIN. When the information is
101 electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or capias
102 to the local police department or sheriff's office. When criminal process has been ordered destroyed
103 pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of
104 any information relating to the destroyed criminal process from the VCIN and NCIC systems.

105 C. The clerk of each circuit court and district court shall make a report to the Central Criminal
106 Records Exchange of (i) any dismissal, indefinite postponement or continuance, charge still pending due
107 to mental incompetency or incapacity, nolle prosequi, acquittal, or conviction of, including any sentence
108 imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed
109 in subsection A, including any action which may have resulted from an indictment, presentment or
110 information, and (ii) any adjudication of delinquency based upon an act which, if committed by an
111 adult, would require fingerprints to be filed pursuant to subsection A. In the case of offenses not
112 required to be reported to the Exchange by subsection A, the reports of any of the foregoing dispositions
113 shall be filed by the law-enforcement agency making the arrest with the arrest record required to be
114 maintained by § 15.2-1722. Upon conviction of any person, including juveniles tried and convicted in
115 the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for
116 which registration is required as defined in § 9.1-902, the clerk shall within seven days of sentencing
117 submit a report to the Sex Offender and Crimes Against Minors Registry. The report to the Registry
118 shall include the name of the person convicted and all aliases which he is known to have used, the date
119 and locality of the conviction for which registration is required, his date of birth, social security number,
120 last known address, and specific reference to the offense for which he was convicted. No report of

conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or capias into the VCIN system.

D. In addition to those offenses enumerated in subsection A of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining correctional status information, as required by the regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange. The reports to the Exchange shall include any commitment to or release or escape from a state or local correctional facility, including commitment to or release from a parole or probation agency.

F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to the Exchange by the office of the Secretary of the Commonwealth.

G. Officials responsible for reporting disposition of charges, and correctional changes of status of individuals under this section, including those reports made to the Registry, shall adopt procedures reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible by the most expeditious means and in no instance later than 30 days after occurrence of the disposition or correctional change of status; and (ii) to report promptly any correction, deletion, or revision of the information.

H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records Exchange shall notify all criminal justice agencies known to have previously received the information.

As used in this section, the term "chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall be controlling.

§ 46.2-391. Revocation of license for multiple convictions of driving while intoxicated; exception; petition for restoration of privilege.

A. The Commissioner shall forthwith revoke and not thereafter reissue for three years the driver's license of any person on receiving a record of the conviction of any person who (i) is adjudged to be a second offender in violation of the provisions of subsection A of § 46.2-341.24 (driving a commercial motor vehicle under the influence of drugs or intoxicants), or § 18.2-266 (driving under the influence of drugs or intoxicants), if the subsequent violation occurred within ~~ten~~10 years from the prior violation, or (ii) is convicted of any two or more offenses of § 18.2-272 (driving while the driver's license has been forfeited for a conviction under § 18.2-266) if the second or subsequent violation occurred within ~~ten~~10 years of the prior offense. However, if the Commissioner has received a copy of a court order authorizing issuance of a restricted license as provided in subsection E of § 18.2-271.1, he shall proceed as provided in the order of the court. For the purposes of this subsection, an offense in violation of a valid local ordinance, or law of any other jurisdiction, which ordinance or law is substantially similar to any provision of Virginia law herein shall be considered an offense in violation of such provision of Virginia law. Additionally, in no event shall the Commissioner reinstate the driver's license of any person convicted of a violation of § 18.2-266, or of a substantially similar valid local ordinance or law of another jurisdiction, until receipt of notification that such person has successfully completed an alcohol safety action program if such person was required by court order to do so unless the requirement for completion of the program has been waived by the court for good cause shown.

B. The Commissioner shall forthwith revoke and not thereafter reissue the driver's license of any person after receiving a record of the conviction of any person (i) convicted of a violation of § 18.2-36.1 or § 18.2-51.4 or (ii) adjudged to be a third offender within a period of ~~ten~~10 years in violation of the provisions of subsection A of § 46.2-341.24 or § 18.2-266, or a substantially similar ordinance or law of any other jurisdiction.

C. Any person who has had his driver's license revoked in accordance with subsection B of this section may petition the circuit court of his residence, or, if a nonresident of Virginia, any circuit court:

1. For restoration of his privilege to drive a motor vehicle in the Commonwealth after the expiration

of five years from the date of his last conviction. On such petition, and for good cause shown, the court may, in its discretion, restore to the person the privilege to drive a motor vehicle in the Commonwealth on condition that such person install an ignition interlock system in accordance with § 18.2-270.1 on all motor vehicles, as defined in § 46.2-100, owned by or registered to him, in whole or in part, for a period of at least six months, and upon whatever other conditions the court may prescribe, subject to the provisions of law relating to issuance of driver's licenses, if the court is satisfied from the evidence presented that: (i) at the time of his previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of himself or others with regard to the driving of a motor vehicle. However, prior to acting on the petition, the court shall order that an evaluation of the person, to include an assessment of his degree of alcohol abuse and the appropriate treatment therefor, if any, be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The court may, in lieu of restoring the person's privilege to drive, authorize the issuance of a restricted license for a period not to exceed five years in accordance with the provisions of § 18.2-270.1 and subsection E of § 18.2-271.1. The court shall notify the Virginia Alcohol Safety Action Program which shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

2. For a restricted license to authorize such person to drive a motor vehicle in the Commonwealth in the course of his employment and to drive a motor vehicle to and from his home to the place of his employment after the expiration of three years from the date of his last conviction. The court may order that a restricted license for such purposes be issued in accordance with the procedures of subsection E of § 18.2-271.1, if the court is satisfied from the evidence presented that (i) at the time of the previous convictions, the petitioner was addicted to or psychologically dependent on the use of alcohol or other drugs; (ii) at the time of the hearing on the petition, he is no longer addicted to or psychologically dependent on the use of alcohol or such other drugs; and (iii) the defendant does not constitute a threat to the safety and welfare of himself and others with regard to the driving of a motor vehicle. The court shall prohibit the person to whom a restricted license is issued from operating a motor vehicle that is not equipped with a functioning, certified ignition interlock system during all or any part of the term for which the restricted license is issued, in accordance with the provisions set forth in § 18.2-270.1. However, prior to acting on the petition, the court shall order that an evaluation of the person, to include an assessment of his degree of alcohol abuse and the appropriate treatment therefor, if any, be conducted by a Virginia Alcohol Safety Action Program and recommendations therefrom be submitted to the court. The Virginia Alcohol Safety Action Program shall during the term of the restricted license monitor the person's compliance with the terms of the restrictions imposed by the court. Any violation of the restrictions shall be reported to the court, and the court may then modify the restrictions or revoke the license.

The ignition interlock system installation requirement under subdivisions 1 and 2 of this subsection need only be satisfied once as to any single revocation under subsection B of this section for any person seeking restoration under subdivision 1 following the granting of a restricted license under subdivision 1 or 2.

D. Any person convicted of driving a motor vehicle or any self-propelled machinery or equipment (i) while his license is revoked pursuant to subsection A or B or (ii) in violation of the terms of a restricted license issued pursuant to subsection C shall, provided such revocation was based on at least one conviction for an offense committed after July 1, 1999, be punished as follows:

1. If such driving does not of itself endanger the life, limb, or property of another, such person shall be guilty of a Class 1 misdemeanor punishable by a minimum, mandatory term of confinement in jail for no less than ~~ten~~ 10 days which shall not be suspended except in cases designated in subdivision 2 b (ii) of this subsection.

2. a. If such driving (i) of itself endangers the life, limb, or property of another or (ii) takes place while such person is in violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or a substantially similar law or ordinance of another jurisdiction, irrespective of whether the driving of itself endangers the life, limb or property of another and the person has been previously convicted of a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, subsection A of § 46.2-341.24, or a substantially similar local ordinance, or law of another jurisdiction, such person shall be guilty of a felony punishable by confinement in a state correctional facility for not less than one year nor more than five years or, in the discretion of the jury or the court trying the case without a jury, by confinement in jail for ~~twelve~~ 12 months and no portion of such sentence shall be suspended *or run concurrently with any other sentence*.

b. However, (i) if the sentence is more than one year in a state correctional facility, any portion of such sentence in excess of one year may be suspended or (ii) in cases wherein such operation is

necessitated in situations of apparent extreme emergency ~~which~~ *that* require such operation to save life or limb, said sentence, or any part thereof may be suspended.

3. If any such offense of driving is a second or subsequent violation, such person shall be punished as provided in subdivision 2 of this subsection, irrespective of whether the offense, of itself, endangers the life, limb, or property of another.

E. Notwithstanding the provisions of subdivisions 2 and 3 of subsection D, following conviction and prior to imposition of sentence with the consent of the defendant, the court may order the defendant to be evaluated for and to participate in the Boot Camp Incarceration Program pursuant to § 19.2-316.1, or the Detention Center Incarceration Program pursuant to § 19.2-316.2, or the Diversion Center Incarceration Program pursuant to § 19.2-316.3.

F. Any period of driver's license revocation imposed pursuant to this section shall not begin to expire until the person convicted has surrendered his license to the court or to the Department of Motor Vehicles.

G. Nothing in this section shall prohibit a person from operating any farm tractor on the highways when it is necessary to move the tractor from one tract of land used for agricultural purposes to another such tract of land when the distance between the tracts is no more than five miles.

H. Any person who operates a motor vehicle or any self-propelled machinery or equipment (i) while his license is revoked pursuant to subsection A or B, or (ii) in violation of the terms of a restricted license issued pursuant to subsection C, where the provisions of subsection D do not apply, shall be guilty of a violation of § 18.2-272.

§ 46.2-391.2. Administrative suspension of license or privilege to operate a motor vehicle.

A. If a breath test is taken pursuant to § 18.2-268.2 or any similar ordinance of any county, city or town and (i) the results show a blood alcohol content of 0.08 percent or more by weight by volume or 0.08 grams or more per 210 liters of breath, or (ii) the results, for persons under 21 years of age, show a blood alcohol concentration of 0.02 percent or more by weight by volume or 0.02 grams or more per 210 liters of breath or (iii) the person refuses to submit to the breath test in violation of § 18.2-268.3 or any similar local ordinance, and upon issuance of a petition or summons, or upon issuance of a warrant by the magistrate, for a violation of §§ 18.2-51.4, 18.2-266, or § 18.2-266.1, or any substantially similar local ordinance, or upon the issuance of a warrant or summons by the magistrate or by the arresting officer at a medical facility for a violation of § 18.2-268.3, or any similar local ordinance, the person's license shall be suspended immediately for seven days *or in the case of a person who has previously been convicted of a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, 18.2-266.1, 46.2-341.24 or any similar local ordinance, until trial of the matter is completed* or in the case of (i) an unlicensed person, (ii) a person whose license is otherwise suspended or revoked, or (iii) a person whose driver's license is from a jurisdiction other than the Commonwealth, such person's privilege to operate a motor vehicle in the Commonwealth shall be suspended immediately ~~for seven days~~ *until trial of the matter is completed*.

A law-enforcement officer, acting on behalf of the Commonwealth, shall serve a notice of suspension personally on the arrested person. When notice is served, the arresting officer shall promptly take possession of any driver's license held by the person and issued by the Commonwealth and shall promptly deliver it to the magistrate. Any driver's license taken into possession under this section shall be forwarded promptly by the magistrate to the clerk of the general district court or, as appropriate, the court with jurisdiction over juveniles of the jurisdiction in which the arrest was made together with any petition, summons or warrant, the results of the breath test, if any, and the report required by subsection B. A copy of the notice of suspension shall be forwarded forthwith to both (a) the general district court or, as appropriate, the court with jurisdiction over juveniles of the jurisdiction in which the arrest was made and (b) the Commissioner. Transmission of this information may be made by electronic means.

The clerk shall promptly return the suspended license to the person at the expiration of the seven-day suspension. Whenever a suspended license is to be returned under this section or § 46.2-391.4, the person may elect to have the license returned in person at the clerk's office or by mail to the address on the person's license or to such other address as he may request.

B. Promptly after arrest and service of the notice of suspension, the arresting officer shall forward to the magistrate a sworn report of the arrest that shall include (i) information which adequately identifies the person arrested and (ii) a statement setting forth the arresting officer's grounds for belief that the person violated §§ 18.2-51.4, 18.2-266, or § 18.2-266.1, or a similar local ordinance or refused to submit to a breath test in violation of § 18.2-268.3 or a similar local ordinance. The report required by this subsection shall be submitted on forms supplied by the Supreme Court.

C. Any person whose license or privilege to operate a motor vehicle has been suspended under subsection A may, during the period of the suspension, request the general district court or, as appropriate, the court with jurisdiction over juveniles of the jurisdiction in which the arrest was made to review that suspension. The court shall review the suspension within the same time period as the court hears an appeal from an order denying bail or fixing terms of bail or terms of recognizance, giving this

305 matter precedence over all other matters on its docket. If the person proves to the court by a
306 preponderance of the evidence that the arresting officer did not have probable cause for the arrest, that
307 the magistrate did not have probable cause to issue the warrant, or that there was not probable cause for
308 issuance of the petition, the court shall rescind the suspension, and the clerk of the court shall forthwith
309 (i) return the suspended license, if any, to the person unless the license has been otherwise suspended or
310 revoked, (ii) deliver to the person a notice that the suspension under § 46.2-391.2 has been rescinded,
311 and (iii) forward to the Commissioner a copy of the notice that the suspension under § 46.2-391.2 has
312 been rescinded. Otherwise, the court shall affirm the suspension. If the person requesting the review fails
313 to appear without just cause, his right to review shall be waived.

314 The court's findings are without prejudice to the person contesting the suspension or to any other
315 potential party as to any proceedings, civil or criminal, and shall not be evidence in any proceedings,
316 civil or criminal.

317 D. If a person whose license or privilege to operate a motor vehicle is suspended under subsection A
318 is convicted under §§ ~~18.2-51.4~~, ~~18.2-266~~, or ~~§18.2-266.1~~, or any similar local ordinance during the
319 seven-day suspension imposed by subsection A, and if the court decides to issue the person a restricted
320 permit under subsection E of § ~~18.2-271.1~~, such restricted permit shall not be issued to the person before
321 the expiration of the seven-day suspension imposed under subsection A.

322 2. That the provisions of this act may result in a net increase in periods of imprisonment or
323 commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0
324 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of
325 commitment to the custody of the Department of Juvenile Justice.