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**SENATE BILL NO. 442**

**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Senate Committee for Courts of Justice)

(Patron Prior to Substitute—Senator Rerras)

Senate Amendments in [ ] — February 6, 2004

*A BILL to amend and reenact §§ 19.2-120 and 19.2-390 of the Code of Virginia, relating to DUI; admission to bail; criminal history record information.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 19.2-120 and 19.2-390 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 §§ 18.2-36.1, 18.2-51.4, 18.2-266, or § 46.2-341.24 and the person has, within the past five years of the instant offense, [ ~~been twice convicted~~ been convicted three times on different dates ] of a violation of any combination 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 [ and has been at liberty between each conviction ] .*

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

ENGROSSED

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

67 a. Treason;

68 b. Any felony;

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

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

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

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

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

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

122 that any conviction or adjudication has been nullified in any manner, he shall also make a report of that  
123 fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon  
124 receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or  
125 to the law-enforcement agency making the arrest in the case of offenses not required to be reported to  
126 the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other  
127 amendment to a prior sentence or disposition previously reported. When criminal process is ordered  
128 destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that  
129 entered the warrant or *capias* into the VCIN system.

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

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

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

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

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

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