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## SENATE BILL NO. 492

Offered January 14, 2004

Prefiled January 14, 2004

*A BILL to amend and reenact §§ 19.2-120 and 19.2-299 of the Code of Virginia, relating to gang crimes; presumption against bail; presentence report.*

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Patron—Mims

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That §§ 19.2-120 and 19.2-299 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 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 §§ 18.2-46.2, 18.2-46.3, 18.2-46.5 or § 18.2-46.7.

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, *membership in a criminal street gang as defined in § 18.2-46.1*, 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.

§ 19.2-299. Investigations and reports by probation officers in certain cases.

A. Unless waived by the court and the defendant and the attorney for the Commonwealth, when a person is tried in a circuit court (i) upon a charge of assault and battery in violation of § 18.2-57 or § 18.2-57.2, stalking in violation of § 18.2-60.3, sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of § 18.2-67.5, or driving while intoxicated in violation of § 18.2-266, and is

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59 adjudged guilty of such charge, the court may, or on motion of the defendant shall, or (ii) upon a felony  
60 charge not set forth in subdivision (iii) below, the court may when there is a plea agreement between  
61 the defendant and the Commonwealth and shall when the defendant pleads guilty without a plea  
62 agreement or is found guilty by the court after a plea of not guilty, or (iii) the court shall when a person  
63 is charged and adjudged guilty of a felony violation, or conspiracy to commit or attempt to commit a  
64 felony violation, of §§ 18.2-46.2, 18.2-46.3, 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2,  
65 18.2-67.2:1, 18.2-67.3, 18.2-67.4:1, 18.2-67.5:1, 18.2-355, 18.2-356, 18.2-357, 18.2-358, 18.2-361,  
66 18.2-362, 18.2-366, 18.2-367, 18.2-368, 18.2-370, 18.2-370.1, or § 18.2-370.2, or any attempt to commit  
67 or conspiracy to commit any felony violation of §§ 18.2-67.5, 18.2-67.5:2, or § 18.2-67.5:3, direct a  
68 probation officer of such court to thoroughly investigate and report upon the history of the accused,  
69 including a report of the accused's criminal record as an adult and available juvenile court records, *any*  
70 *information regarding the accused's participation or membership in a criminal street gang as defined in*  
71 *§ 18.2-46.1*, and all other relevant facts, to fully advise the court so the court may determine the  
72 appropriate sentence to be imposed. The probation officer, after having furnished a copy of this report at  
73 least five days prior to sentencing to counsel for the accused and the attorney for the Commonwealth for  
74 their permanent use, shall submit his report in advance of the sentencing hearing to the judge in  
75 chambers, who shall keep such report confidential. The probation officer shall be available to testify  
76 from this report in open court in the presence of the accused, who shall have been advised of its  
77 contents and be given the right to cross-examine the investigating officer as to any matter contained  
78 therein and to present any additional facts bearing upon the matter. The report of the investigating  
79 officer shall at all times be kept confidential by each recipient, and shall be filed as a part of the record  
80 in the case. Any report so filed shall be made available only by court order and shall be sealed upon  
81 final order by the court, except that such reports or copies thereof shall be available at any time to any  
82 criminal justice agency, as defined in § 9.1-101, of this or any other state or of the United States; to any  
83 agency where the accused is referred for treatment by the court or by probation and parole services; and  
84 to counsel for any person who has been indicted jointly for the same felony as the person subject to the  
85 report. Any report prepared pursuant to the provisions hereof shall without court order be made available  
86 to counsel for the person who is the subject of the report if that person is charged with a felony  
87 subsequent to the time of the preparation of the report. The presentence report shall be in a form  
88 prescribed by the Department of Corrections. In all cases where such report is not ordered, a simplified  
89 report shall be prepared on a form prescribed by the Department of Corrections. *For the purposes of this*  
90 *subsection, information regarding the accused's participation or membership in a criminal street gang*  
91 *may include the characteristics, specific rivalries, common practices, social customs and behavior,*  
92 *terminology, and types of crimes that are likely to be committed by that criminal street gang.*

93 B. As a part of any presentence investigation conducted pursuant to subsection A when the offense  
94 for which the defendant was convicted was a felony, the court probation officer shall advise any victim  
95 of such offense in writing that he may submit to the Virginia Parole Board a written request (i) to be  
96 given the opportunity to submit to the Board a written statement in advance of any parole hearing  
97 describing the impact of the offense upon him and his opinion regarding the defendant's release and (ii)  
98 to receive copies of such other notifications pertaining to the defendant as the Board may provide  
99 pursuant to subsection B of § 53.1-155.

100 C. As part of any presentence investigation conducted pursuant to subsection A when the offense for  
101 which the defendant was convicted was a felony drug offense set forth in Article 1 (§ 18.2-247 et seq.)  
102 of Chapter 7 of Title 18.2, the presentence report shall include any known association of the defendant  
103 with illicit drug operations or markets.

104 D. As a part of any presentence investigation conducted pursuant to subsection A, when the offense  
105 for which the defendant was convicted was a felony, not a capital offense, committed on or after  
106 January 1, 2000, the defendant shall be required to undergo a substance abuse screening pursuant to  
107 § 18.2-251.01.