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HOUSE BILL NO. 1309

Offered January 11, 2006

Prefiled January 11, 2006

A BILL to amend and reenact §§ 19.2-120 and 19.2-389.1 of the Code of Virginia, relating to criminal history of a juvenile as element in determination of bail.

Patron—Gilbert

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-120 and 19.2-389.1 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 including his criminal history as a juvenile.

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 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 mandatory minimum 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 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 or a substantially similar offense under the laws of any state or the United States 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;
8. A violation of § 18.2-46.2, 18.2-46.3, 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 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 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 being arrested pursuant to § 19.2-81.6.

D. 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

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

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

63 F. *For purposes of this section, "felony" includes any prior offense committed by a juvenile that*  
64 *would have been a felony if committed by an adult.*

65 § 19.2-389.1. Dissemination of juvenile record information.

66 Record information maintained in the Central Criminal Records Exchange pursuant to the provisions  
67 of § 16.1-299 shall be disseminated only (i) to make the determination as provided in §§ 18.2-308.2 and  
68 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) to aid in the preparation of a pretrial  
69 investigation report prepared by a local pretrial services agency established pursuant to Article 5  
70 (§ 19.2-152.2 et seq.) of Chapter 9 of this title, a presentence or post-sentence investigation report  
71 pursuant to § 19.2-264.5 or 19.2-299 or in the preparation of the discretionary sentencing guidelines  
72 worksheets pursuant to subsection C of § 19.2-298.01; (iii) to aid local community-based probation  
73 programs established pursuant to the Comprehensive Community Corrections Act for Local-Responsible  
74 Offenders (§ 9.1-173 et seq.) with investigating or serving adult local-responsible offenders and all court  
75 service units serving juvenile delinquent offenders; (iv) for fingerprint comparison utilizing the  
76 fingerprints maintained in the Automated Fingerprint Information System (AFIS) computer; (v) to  
77 attorneys for the Commonwealth to secure information incidental to sentencing and to attorneys for the  
78 Commonwealth and probation officers to prepare the discretionary sentencing guidelines worksheets  
79 pursuant to subsection C of § 19.2-298.01; (vi) to any full-time or part-time employee of the State  
80 Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or  
81 any political subdivision thereof, and who is responsible for the prevention and detection of crime and  
82 the enforcement of the penal, traffic or highway laws of the Commonwealth, for purposes of the  
83 administration of criminal justice as defined in § 9.1-101; (vii) to the Department of Forensic Science to  
84 verify its authority to maintain the juvenile's sample in the DNA data bank pursuant to § 16.1-299.1; ~~and~~  
85 (viii) to the Office of the Attorney General, for all criminal justice activities otherwise permitted and for  
86 purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act  
87 (§ 37.2-900 et seq.); *and (ix) to any judicial officer as defined in § 19.2-119 for his use in making a*  
88 *bail determination under § 19.2-120.*