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## SENATE BILL NO. 344

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on February 27, 2006)

(Patron Prior to Substitute—Senator Obenshain)

*A BILL to amend and reenact §§ 19.2-123 and 19.2-303 of the Code of Virginia, relating to prohibition of contact with members of a criminal street gang as a condition of probation or bond; penalty.***Be it enacted by the General Assembly of Virginia:****1. That §§ 19.2-123 and 19.2-303 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-123. Release of accused on secured or unsecured bond or promise to appear; conditions of release.

A. Any person arrested for a felony who has previously been convicted of a felony, or who is presently on bond for an unrelated arrest in any jurisdiction, or who is on probation or parole, may be released only upon a secure bond. This provision may be waived with the approval of the judicial officer and with the concurrence of the attorney for the Commonwealth or the attorney for the county, city or town. Subject to the foregoing, when a person is arrested for either a felony or a misdemeanor, any judicial officer may impose any one or any combination of the following conditions of release:

1. Place the person in the custody and supervision of a designated person, organization or pretrial services agency which, for the purposes of this section, shall not include a court services unit established pursuant to § 16.1-233;

2. Place restrictions on the travel, association or place of abode of the person during the period of release and restrict contacts with household members for a period not to exceed seventy-two hours;

2a. Require the execution of an unsecured bond;

3. Require the execution of a secure bond which at the option of the accused shall be satisfied with sufficient solvent sureties, or the deposit of cash in lieu thereof. Only the actual value of any interest in real estate or personal property owned by the proposed surety shall be considered in determining solvency and solvency shall be found if the value of the proposed surety's equity in the real estate or personal property equals or exceeds the amount of the bond;

3a. Require that the person do any or all of the following: (i) maintain employment or, if unemployed, actively seek employment; (ii) maintain or commence an educational program; (iii) avoid all contact with an alleged victim of the crime and with any potential witness who may testify concerning the offense; (iv) *avoid all contact with any person he knows or has reason to know is a member of a criminal street gang, as that term is defined in § 18.2-46.1*; (v) comply with a specified curfew; ~~(vi)~~ refrain from possessing a firearm, destructive device, or other dangerous weapon; ~~(vii)~~ refrain from excessive use of alcohol, or use of any illegal drug or any controlled substance not prescribed by a health care provider; and ~~(viii)~~ submit to testing for drugs and alcohol until the final disposition of his case; or

4. Impose any other condition deemed reasonably necessary to assure appearance as required, and to assure his good behavior pending trial, including a condition requiring that the person return to custody after specified hours or be placed on home electronic incarceration pursuant to § 53.1-131.2.

Upon satisfaction of the terms of recognizance, the accused shall be released forthwith.

In addition, where the accused is a resident of a state training center for the mentally retarded, the judicial officer may place the person in the custody of the director of the state facility, if the director agrees to accept custody. Such director is hereby authorized to take custody of such person and to maintain him at the training center prior to a trial or hearing under such circumstances as will reasonably assure the appearance of the accused for the trial or hearing.

B. In any jurisdiction served by a pretrial services agency which offers a drug or alcohol screening or testing program approved for the purposes of this subsection by the chief general district court judge, any such person charged with a crime may be requested by such agency to give voluntarily a urine sample, submit to a drug or alcohol screening, or take a breath test for presence of alcohol. A sample may be analyzed for the presence of phencyclidine (PCP), barbiturates, cocaine, opiates or such other drugs as the agency may deem appropriate prior to any hearing to establish bail. The judicial officer and agency shall inform the accused or juvenile being screened or tested that test results shall be used by a judicial officer only at a bail hearing and only to determine appropriate conditions of release or to reconsider the conditions of bail at a subsequent hearing. All screening or test results, and any pretrial investigation report containing the screening or test results, shall be confidential with access thereto limited to judicial officers, the attorney for the Commonwealth, defense counsel, other pretrial service agencies, any criminal justice agency as defined in § 9.1-101 and, in cases where a juvenile is screened or tested, the parents or legal guardian or custodian of such juvenile. However, in no event shall the

60 judicial officer have access to any screening or test result prior to making a bail release determination or  
61 to determining the amount of bond, if any. Following this determination, the judicial officer shall  
62 consider the screening or test results and the screening or testing agency's report and accompanying  
63 recommendations, if any, in setting appropriate conditions of release. In no event shall a decision  
64 regarding a release determination be subject to reversal on the sole basis of such screening or test  
65 results. Any accused or juvenile whose urine sample has tested positive for such drugs and who is  
66 admitted to bail may, as a condition of release, be ordered to refrain from use of alcohol or illegal drugs  
67 and may be required to be tested on a periodic basis until final disposition of his case to ensure his  
68 compliance with the order. Sanctions for a violation of any condition of release, which violations shall  
69 include subsequent positive drug or alcohol test results or failure to report as ordered for testing, may be  
70 imposed in the discretion of the judicial officer and may include imposition of more stringent conditions  
71 of release, contempt of court proceedings or revocation of release. Any test given under the provisions  
72 of this subsection which yields a positive drug or alcohol test result shall be reconfirmed by a second  
73 test if the person tested denies or contests the initial drug or alcohol test positive result. The results of  
74 any drug or alcohol test conducted pursuant to this subsection shall not be admissible in any judicial  
75 proceeding other than for the imposition of sanctions for a violation of a condition of release.

76 C. [Repealed.]

77 D. Nothing in this section shall be construed to prevent an officer taking a juvenile into custody  
78 from releasing that juvenile pursuant to § 16.1-247. If any condition of release imposed under the  
79 provisions of this section is violated, a judicial officer may issue a capias or order to show cause why  
80 the recognizance should not be revoked.

81 § 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints as condition of  
82 probation.

83 After conviction, whether with or without jury, the court may suspend imposition of sentence or  
84 suspend the sentence in whole or part and in addition may place the accused on probation under such  
85 conditions as the court shall determine or may, as a condition of a suspended sentence, require the  
86 accused to make at least partial restitution to the aggrieved party or parties for damages or loss caused  
87 by the offense for which convicted, or to perform community service, or both, under terms and  
88 conditions which shall be entered in writing by the court. The judge, after convicting the accused of a  
89 felony, shall determine whether a copy of the accused's fingerprints are on file at the Central Criminal  
90 Records Exchange. In any case where fingerprints are not on file, the judge shall require that  
91 fingerprints be taken as a condition of probation. Such fingerprints shall be submitted to the Central  
92 Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

93 *When a person is sentenced upon conviction of § 18.2-46.2 or 18.2-46.3 the court shall, and upon*  
94 *conviction of any other offense the court may, as a condition for suspending the imposition of the*  
95 *sentence in whole or in part or for placing the accused on probation, order the accused to refrain from*  
96 *having contact with any person he knows or has reason to know is a member of a criminal street gang,*  
97 *as that term is defined in § 18.2-46.1. However, the order may allow for the accused to have contact*  
98 *with a person who is a "family or household member" as set forth in clauses (i) through (v) of that*  
99 *definition in § 16.1-228.*

100 If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any  
101 time before the sentence has been completely served, suspend the unserved portion of any such sentence,  
102 place the person on probation for such time as the court shall determine, or otherwise modify the  
103 sentence imposed.

104 If a person has been sentenced for a felony to the Department of Corrections but has not actually  
105 been transferred to a receiving unit of the Department, the court which heard the case, if it appears  
106 compatible with the public interest and there are circumstances in mitigation of the offense, may, at any  
107 time before the person is transferred to the Department, suspend or otherwise modify the unserved  
108 portion of such a sentence. The court may place the person on probation for such time as the court shall  
109 determine.

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