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SENATE BILL NO. 1237

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on January 30, 2007)

(Patron Prior to Substitute—Senator Obenshain)

A BILL to amend and reenact §§ 16.1-253.2 and 19.2-120 of the Code of Virginia, relating to violation of provisions of protective orders; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253.2 and 19.2-120 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-253.2. Violation of provisions of protective orders; penalty.

In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-278.14, 16.1-279.1 or subsection B of § 20-103, which prohibits such person from going or remaining upon land, buildings or premises or from further acts of family abuse, or which prohibits contacts between the respondent and the respondent's family or household member as the court deems appropriate is guilty of a Class 1 misdemeanor. *The punishment for any person convicted of a second offense of violating a protective order, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall include a mandatory minimum term of confinement of 60 days. Any person convicted of a third offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of confinement of six months.*

If the respondent commits an assault and battery upon any party protected by the protective order, resulting in serious bodily injury to the party, he is guilty of a Class 6 felony. Any person who violates such a protective order by furtively entering the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law.

Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § 16.1-279.1 for a specified period not exceeding two years from the date of conviction.

§ 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 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

60 charged with one of these offenses committed the offense charged;

61 8. A violation of § 18.2-46.2, 18.2-46.3, 18.2-46.5 or 18.2-46.7; ~~or~~

62 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
63 five years of the instant offense, been convicted three times on different dates of a violation of any
64 combination of these Code sections, or any ordinance of any county, city, or town or the laws of any
65 other state or of the United States substantially similar thereto, and has been at liberty between each
66 conviction; *or*

67 *10. A second or subsequent violation of § 16.1-253.2 or a substantially similar offense under the*
68 *laws of any state or the United States.*

69 C. The judicial officer shall presume, subject to rebuttal, that no condition or combination of
70 conditions will reasonably assure the appearance of the person or the safety of the public if the person is
71 being arrested pursuant to § 19.2-81.6.

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

76 1. The nature and circumstances of the offense charged;

77 2. The history and characteristics of the person, including his character, physical and mental
78 condition, family ties, employment, financial resources, length of residence in the community,
79 community ties, past conduct, history relating to drug or alcohol abuse, criminal history, membership in
80 a criminal street gang as defined in § 18.2-46.1, and record concerning appearance at court proceedings;
81 and

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

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

86 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
87 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
88 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**
89 **periods of commitment to the custody of the Department of Juvenile Justice.**