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SENATE BILL NO. 733

Offered January 18, 2008

A BILL to amend and reenact § 19.2-120 of the Code of Virginia, relating to presumption against admission to bail for illegal aliens.

Patrons—Smith and Cuccinelli; Delegate: Cole

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-120 of the Code of Virginia is 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 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 § 18.2-374.1 or 18.2-374.3 where the offender has reason to believe that the solicited person is under 15 years of age and the offender is at least five years older than the solicited person;

9. A violation of § 18.2-46.2, 18.2-46.3, 18.2-46.5 or 18.2-46.7;

10. 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; or

11. A second or subsequent violation of § 16.1-253.2 or a substantially similar offense under the laws of any state or the United States; or

12. Any criminal offense and he is an alien who is present in the United States illegally and subject to detention by the Law Enforcement Support Center of the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security.

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

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59 required and the safety of the public:

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

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

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

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