

2011 RECONVENED SESSION

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SB925ER2

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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An Act to amend and reenact §§ 19.2-123 and 19.2-303 of the Code of Virginia, relating to GPS tracking for persons on bond or probation.

[S 925]

Approved

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 72 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) comply with a specified curfew; (v) refrain from possessing a firearm, destructive device, or other dangerous weapon; (vi) refrain from excessive use of alcohol, or use of any illegal drug or any controlled substance not prescribed by a health care provider; and (vii) submit to testing for drugs and alcohol until the final disposition of his case;

3b. Place a prohibition on a person who holds an elected constitutional office and who is accused of a felony arising from the performance of his duties from physically returning to his constitutional office; 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 or, when the person is required to execute a secured bond, be subject to monitoring by a GPS (Global Positioning System) tracking device, or other similar device. The defendant may be ordered by the court to pay the cost of the device.

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

57 reconsider the conditions of bail at a subsequent hearing. All screening or test results, and any pretrial
58 investigation report containing the screening or test results, shall be confidential with access thereto
59 limited to judicial officers, the attorney for the Commonwealth, defense counsel, other pretrial service
60 agencies, any criminal justice agency as defined in § 9.1-101 and, in cases where a juvenile is screened
61 or tested, the parents or legal guardian or custodian of such juvenile. However, in no event shall the
62 judicial officer have access to any screening or test result prior to making a bail release determination or
63 to determining the amount of bond, if any. Following this determination, the judicial officer shall
64 consider the screening or test results and the screening or testing agency's report and accompanying
65 recommendations, if any, in setting appropriate conditions of release. In no event shall a decision
66 regarding a release determination be subject to reversal on the sole basis of such screening or test
67 results. Any accused or juvenile whose urine sample has tested positive for such drugs and who is
68 admitted to bail may, as a condition of release, be ordered to refrain from use of alcohol or illegal drugs
69 and may be required to be tested on a periodic basis until final disposition of his case to ensure his
70 compliance with the order. Sanctions for a violation of any condition of release, which violations shall
71 include subsequent positive drug or alcohol test results or failure to report as ordered for testing, may be
72 imposed in the discretion of the judicial officer and may include imposition of more stringent conditions
73 of release, contempt of court proceedings or revocation of release. Any test given under the provisions
74 of this subsection which yields a positive drug or alcohol test result shall be reconfirmed by a second
75 test if the person tested denies or contests the initial drug or alcohol test positive result. The results of
76 any drug or alcohol test conducted pursuant to this subsection shall not be admissible in any judicial
77 proceeding other than for the imposition of sanctions for a violation of a condition of release.

78 C. [Repealed.]

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

83 E. Nothing in this section shall be construed to prevent a court from imposing a recognizance or
84 bond designed to secure a spousal or child support obligation pursuant to § 16.1-278.16, Chapter 5
85 (§ 20-61 et seq.) of Title 20, or § 20-114 in addition to any recognizance or bond imposed pursuant to
86 this chapter.

87 § 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood,
88 saliva, or tissue sample as condition of probation.

89 After conviction, whether with or without jury, the court may suspend imposition of sentence or
90 suspend the sentence in whole or part and in addition may place the defendant on probation under such
91 conditions as the court shall determine, *including monitoring by a GPS (Global Positioning System)*
92 *tracking device, or other similar device*, or may, as a condition of a suspended sentence, require the
93 defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused
94 by the offense for which convicted, or to perform community service, or both, under terms and
95 conditions which shall be entered in writing by the court. *The defendant may be ordered by the court to*
96 *pay the cost of the GPS tracking device or other similar device*. If, however, the court suspends or
97 modifies any sentence fixed by a jury pursuant to § 19.2-295, the court shall file a statement of the
98 reasons for the suspension or modification in the same manner as the statement required pursuant to
99 subsection B of § 19.2-298.01. The judge, after convicting the defendant of a felony, shall determine
100 whether a copy of the defendant's fingerprints are on file at the Central Criminal Records Exchange. In
101 any case where fingerprints are not on file, the judge shall require that fingerprints be taken as a
102 condition of probation. Such fingerprints shall be submitted to the Central Criminal Records Exchange
103 under the provisions of subsection D of § 19.2-390.

104 In those courts having electronic access to the Local Inmate Data System (LIDS) within the
105 courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing LIDS
106 whether a blood, saliva, or tissue sample has been taken for DNA analysis and submitted to the DNA
107 data bank maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et
108 seq.) of Chapter 18 of this title. In any case in which the clerk has determined that a DNA sample or
109 analysis is not stored in the DNA data bank, or in any case in which electronic access to LIDS is not
110 available in the courtroom, the court shall order that the defendant appear within 30 days before the
111 sheriff or probation officer and allow the sheriff or probation officer to take the required sample. The
112 order shall also require that, if the defendant has not appeared and allowed the sheriff or probation
113 officer to take the required sample by the date stated in the order, then the sheriff or probation officer
114 shall report to the court the defendant's failure to appear and provide the required sample.

115 After conviction and upon sentencing of an active participant or member of a criminal street gang,
116 the court may, as a condition for suspending the imposition of the sentence in whole or in part or for
117 placing the accused on probation, place reasonable restrictions on those persons with whom the accused

118 may have contact. Such restrictions may include prohibiting the accused from having contact with
119 anyone whom he knows to be a member of a criminal street gang, except that contact with a family or
120 household member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court.

121 In any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1,
122 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1, committed on or after July 1, 2006, and some portion of
123 the sentence is suspended, the judge shall order that the period of suspension shall be for a length of
124 time at least equal to the statutory maximum period for which the defendant might originally have been
125 sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension
126 subject to revocation by the court. The conditions of probation may include such conditions as the court
127 shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of
128 subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court
129 shall order that at least three years of the probation include active supervision of the defendant under a
130 postrelease supervision program operated by the Department of Corrections, and for at least three years
131 of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS
132 (Global Positioning System) tracking device, or other similar device.

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

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