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SENATE BILL NO. 158

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 23, 2012)

(Patron Prior to Substitute—Senator Obenshain)

*A BILL to amend and reenact § 19.2-120 of the Code of Virginia, relating to admission to bail; notice to attorney for the Commonwealth.***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;

11. A second or subsequent violation of § 16.1-253.2 or 18.2-60.4 or a substantially similar offense under the laws of any state or the United States;

12. A violation of subsection B of § 18.2-57.2; or

13. A violation of subsection C of § 18.2-460 charging the use of threats of bodily harm or force to knowingly attempt to intimidate or impede a witness.

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. A judicial officer who is a magistrate, clerk, or deputy clerk of a district court or circuit court may not admit any person to bail that is not set by a judge who is charged with an offense giving rise to a rebuttable presumption against bail as set out in subsection B or C without the concurrence of an attorney for the Commonwealth. For a person who is charged with an offense giving rise to a rebuttable presumption against bail, any judge may set or admit such person to bail in accordance with

60 *this section after notice and an opportunity to be heard has been provided to the attorney for the*
61 *Commonwealth.*

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

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

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

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

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

76 FG. If the judicial officer sets a secured bond and the person engages the services of a licensed bail
77 bondsman, the magistrate executing recognizance for the accused shall provide the bondsman, upon
78 request, with a copy of the person's Virginia criminal history record, if readily available, to be used by
79 the bondsman only to determine appropriate reporting requirements to impose upon the accused upon his
80 release. The bondsman shall pay a \$15 fee payable to the state treasury to be credited to the Literary
81 Fund, upon requesting the defendant's Virginia criminal history record issued pursuant to § 19.2-389.
82 The bondsman shall review the record on the premises and promptly return the record to the magistrate
83 after reviewing it.