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HOUSE BILL NO. 2320

Offered January 9, 2019

Prefiled January 8, 2019

A BILL to amend and reenact §§ 19.2-124, 19.2-130, 19.2-132, and 19.2-186 of the Code of Virginia, relating to resetting bail, bond, and recognizance determinations; jurisdiction.

Patron—VanValkenburg

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-124, 19.2-130, 19.2-132, and 19.2-186 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-124. Appeal from bail, bond, or recognizance order.

A. If a judicial officer denies bail to a person, requires excessive bond, or fixes unreasonable terms of a recognizance under this article, the person may appeal the decision of the judicial officer.

If the initial bail decision on a charge brought by a warrant or district court *capias* is made by a magistrate, clerk, or deputy clerk, the person shall first appeal to the district court in which the case is pending.

If the initial bail decision on a charge brought by direct indictment or presentment or circuit court *capias* is made by a magistrate, clerk, or deputy clerk, the person shall first appeal to the circuit court in which the case is pending.

If the appeal of an initial bail decision is taken on any charge originally pending in a district court after that charge has been appealed, certified, or transferred to a circuit court, the person shall first appeal to the circuit court in which the case is pending.

Any bail decision made by a judge of a court may be appealed successively by the person to the next higher court, up to and including the Supreme Court of Virginia, where permitted by law.

*The bail decision of the higher court on such appeal, unless the higher court orders otherwise, shall be remanded to the court in which the case is pending for enforcement and modification. The court in which the case is pending shall not modify the bail decision of the higher court, except upon a change in the circumstances subsequent to the decision of the higher court.*

B. The attorney for the Commonwealth may appeal a bail, bond, or recognizance decision to the same court to which the accused person is required to appeal under subsection A.

C. In a matter not governed by subsection B or C of § 19.2-120 or § 19.2-120.1, the court granting or denying such bail may, upon appeal thereof, and for good cause shown, stay execution of such order for so long as reasonably practicable for the party to obtain an expedited hearing before the next higher court. When a district court grants bail over the presumption against bail in a matter that is governed by subsection B or C of § 19.2-120 or § 19.2-120.1, and upon notice by the Commonwealth of its appeal of the court's decision, the court shall stay execution of such order for so long as reasonably practical for the Commonwealth to obtain an expedited hearing before the circuit court, but in no event more than five days, unless the defendant requests a hearing date outside the five-day limit.

No such stay under this subsection may be granted after any person who has been granted bail has been released from custody on such bail.

D. No filing or service fees shall be assessed or collected for any appeal taken pursuant to this section.

§ 19.2-130. Bail in subsequent proceeding arising out of initial arrest.

A. Any person admitted to bail by a judge or clerk of a district court or by a magistrate shall not be required to be admitted to bail in any subsequent proceeding arising out of the initial arrest unless the court having jurisdiction of such subsequent proceeding deems the initial amount of bond or security taken inadequate. When the court having jurisdiction of the proceeding believes the amount of bond or security inadequate or excessive, it may change the amount of such bond or security, require new and additional sureties, or set other terms of bail as are appropriate to the case, including, but not limited to, drug and alcohol monitoring. The court may, after notice to the parties, initiate a proceeding to alter the terms and conditions of bail on its own motion.

B. Any motion to alter the terms and conditions of bail where the initial bail decision is made by a judge or clerk of a district court or by a magistrate on any charge originally pending in that district court shall be filed in that district court unless (i) a bail decision is on appeal, (ii) such charge has been transferred pursuant to § 16.1-269.1 to a circuit court, or (iii) an indictment has been returned after such charge has been certified by a district court, in which instance such motion shall be filed in

59 *circuit court.*

60 **§ 19.2-132. Motion to increase amount of bond fixed by judicial officer; when bond may be**  
61 **increased.**

62 A. If the amount of any bond fixed by a judicial officer is subsequently deemed insufficient, or the  
63 security taken inadequate, or if it appears that bail should have been denied or that the person has  
64 violated a term or condition of his release, or has been convicted of or arrested for a felony or  
65 misdemeanor, the attorney for the Commonwealth of the county or city in which the person is held for  
66 trial may, on reasonable notice to the person and, if such person has been admitted to bail, to any surety  
67 on the bond of such person, move the appropriate judicial officer to increase the amount of such bond  
68 or to revoke bail. The court may grant such motion and may require new or additional sureties therefor,  
69 or both, or revoke bail. Any surety in a bond for the appearance of such person may take from his  
70 principal collateral or other security to indemnify such surety against liability. The failure to notify the  
71 surety will not prohibit the court from proceeding with the bond hearing.

72 The court ordering any increase in the amount of such bond, ordering new or additional sureties, *or*  
73 *both*, or revoking such bail may, upon appeal, and for good cause shown, stay execution of such order  
74 for so long as reasonably practicable for such person to obtain an expedited hearing before the court to  
75 which such order has been appealed.

76 B. *Any motion filed pursuant to subsection A where the initial bail decision is made by a judge or*  
77 *clerk of a district court or by a magistrate on any charge originally pending in that district court shall*  
78 *be filed in that district court unless (i) a bail decision is on appeal, (ii) such charge has been*  
79 *transferred pursuant to § 16.1-269.1 to a circuit court, or (iii) an indictment has been returned after*  
80 *such charge has been certified by a district court, in which instance such motion shall be filed in circuit*  
81 *court.*

82 **§ 19.2-186. When accused to be discharged, tried, committed, or bailed by judge.**

83 The judge shall discharge the accused if he considers that there is not sufficient cause for charging  
84 him with the offense.

85 If a judge considers that there is sufficient cause only to charge the accused with an offense which  
86 the judge has jurisdiction to try, then he shall try the accused for such offense and convict him if he  
87 deems him guilty and pass judgment upon him in accordance with law just as if the accused had first  
88 been brought before him on a warrant charging him with such offense.

89 If a judge considers that there is sufficient cause to charge the accused with an offense that he does  
90 not have jurisdiction to try, then he shall certify the case to the appropriate court having jurisdiction and  
91 shall commit the accused to jail or let him to bail pursuant to the provisions of Article 1 (§ 19.2-119 et  
92 seq.) of Chapter 9 ~~of this title~~ *and shall retain jurisdiction over bail decisions until such time as the*  
93 *grand jury acts upon the case or the circuit court otherwise obtains jurisdiction.*