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HOUSE BILL NO. 1462

Offered January 8, 2020

Prefiled January 8, 2020

A BILL to amend and reenact §§ 19.2-120 and 19.2-124 of the Code of Virginia and to repeal § 19.2-120.1 of the Code of Virginia, relating to admission to bail; rebuttable presumptions against bail.

Patrons—Scott, Bagby, Samirah, Guzman and Rasoul

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-120 and 19.2-124 of the Code of Virginia are 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;~~

~~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;~~

~~14. A violation of § 18.2-51.6 if the alleged victim is a family or household member as defined in § 16.1-228; or~~

~~15. A violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1.~~

~~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 to bail, that is not set by a judge, any person 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 this section after notice and an opportunity to be heard has been provided to the attorney for the Commonwealth.~~

~~E. 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 required and the safety of the public:~~

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

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

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

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

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

§ 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~~ *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.

2. That § 19.2-120.1 of the Code of Virginia is repealed.