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HOUSE BILL NO. 285

Offered January 8, 2020

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A BILL to amend and reenact §§ 19.2-120, 19.2-123, and 19.2-390 of the Code of Virginia, relating to admission to bail; secure bond.

 Patron—Carter

 Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-120, 19.2-123, and 19.2-390 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

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59 conditions will reasonably assure the appearance of the person or the safety of the public if the person is
60 being arrested pursuant to § 19.2-81.6.

61 D. A judicial officer who is a magistrate, clerk, or deputy clerk of a district court or circuit court
62 may not admit to bail, that is not set by a judge, any person who is charged with an offense giving rise
63 to a rebuttable presumption against bail as set out in subsection B or C without the concurrence of an
64 attorney for the Commonwealth. For a person who is charged with an offense giving rise to a rebuttable
65 presumption against bail, any judge may set or admit such person to bail in accordance with this section
66 after notice and an opportunity to be heard has been provided to the attorney for the Commonwealth.

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

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

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

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

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

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

89 **§ 19.2-123. Release of accused on unsecured bond or promise to appear; conditions of release.**

90 A. Any person arrested for a felony who has previously been convicted of a felony, or who is
91 presently on bond for an unrelated arrest in any jurisdiction, or who is on probation or parole, may be
92 released only upon a secure bond. This provision may be waived with the approval of the judicial
93 officer and with the concurrence of the attorney for the Commonwealth or the attorney for the county,
94 city or town. Subject to the foregoing, when a person is arrested for either a felony or a
95 misdemeanor, any judicial officer may impose any one or any combination of the following conditions
96 of release:

97 1. Place the person in the custody and supervision of a designated person, organization or pretrial
98 services agency which, for the purposes of this section, shall not include a court services unit established
99 pursuant to § 16.1-233;

100 2. Place restrictions on the travel, association or place of abode of the person during the period of
101 release and restrict contacts with household members for a specified period of time;

102 ~~2a.~~ 3. Require the execution of an unsecured bond;

103 ~~3.~~ Require the execution of a secure bond which at the option of the accused shall be satisfied with
104 sufficient solvent sureties, or the deposit of cash in lieu thereof. Only the actual value of any interest in
105 real estate or personal property owned by the proposed surety shall be considered in determining
106 solvency and solvency shall be found if the value of the proposed surety's equity in the real estate or
107 personal property equals or exceeds the amount of the bond;

108 ~~3a.~~ 4. Require that the person do any or all of the following: (i) maintain employment or, if
109 unemployed, actively seek employment; (ii) maintain or commence an educational program; (iii) avoid
110 all contact with an alleged victim of the crime and with any potential witness who may testify
111 concerning the offense; (iv) comply with a specified curfew; (v) refrain from possessing a firearm,
112 destructive device, or other dangerous weapon; (vi) refrain from excessive use of alcohol, or use of any
113 illegal drug or any controlled substance not prescribed by a health care provider; and (vii) submit to
114 testing for drugs and alcohol until the final disposition of his case;

115 ~~3b.~~ 5. Place a prohibition on a person who holds an elected constitutional office and who is accused
116 of a felony arising from the performance of his duties from physically returning to his constitutional
117 office;

118 ~~3e.~~ 6. Require the accused to accompany the arresting officer to the jurisdiction's fingerprinting
119 facility and submit to having his photograph and fingerprints taken prior to release; or

120 ~~4.~~ 7. 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.

The judicial officer may not require, as a condition of release, the execution of a secure bond.

Upon satisfaction of the terms of recognizance, the accused shall be released forthwith.

In addition, where the accused is an individual receiving services in a state training center for individuals with intellectual disability, the judicial officer may place the individual in the custody of the director of the training center, if the director agrees to accept custody. The director is hereby authorized to take custody of the individual 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 reconsider the conditions of bail at a subsequent hearing. All screening or test results, and any pretrial investigation report containing the screening or test results, shall be confidential with access thereto limited to judicial officers, the attorney for the Commonwealth, defense counsel, other pretrial service agencies, any criminal justice agency as defined in § 9.1-101 and, in cases where a juvenile is screened or tested, the parents or legal guardian or custodian of such juvenile. However, in no event shall the judicial officer have access to any screening or test result prior to making a bail release determination or to determining the amount of bond, if any. Following this determination, the judicial officer shall consider the screening or test results and the screening or testing agency's report and accompanying recommendations, if any, in setting appropriate conditions of release. In no event shall a decision regarding a release determination be subject to reversal on the sole basis of such screening or test results. Any accused or juvenile whose urine sample has tested positive for such drugs and who is admitted to bail may, as a condition of release, be ordered to refrain from use of alcohol or illegal drugs and may be required to be tested on a periodic basis until final disposition of his case to ensure his compliance with the order. Sanctions for a violation of any condition of release, which violations shall include subsequent positive drug or alcohol test results or failure to report as ordered for testing, may be imposed in the discretion of the judicial officer and may include imposition of more stringent conditions of release, contempt of court proceedings or revocation of release. Any test given under the provisions of this subsection which yields a positive drug or alcohol test result shall be reconfirmed by a second test if the person tested denies or contests the initial drug or alcohol test positive result. The results of any drug or alcohol test conducted pursuant to this subsection shall not be admissible in any judicial proceeding other than for the imposition of sanctions for a violation of a condition of release.

C. [Repealed.]

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

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

§ 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by other agencies.

A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police officials of cities and towns, and any other local law-enforcement officer or conservator of the peace having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange, on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or service of process upon, any person on charges resulting from an indictment, presentment or information, the arrest on capias or warrant for failure to appear, and the service of a warrant for another jurisdiction, for each charge when any person is arrested on any of the following charges:

- 182 a. Treason;
183 b. Any felony;
184 c. Any offense punishable as a misdemeanor under Title 54.1;
185 d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, or any similar
186 ordinance of any county, city or town, (ii) under § 20-61, or (iii) under § 16.1-253.2; or
187 e. Any offense in violation of § 3.2-6570, 4.1-309.1, 5.1-13, 15.2-1612, 46.2-339, 46.2-341.21,
188 46.2-341.24, 46.2-341.26:3, 46.2-817, 58.1-3141, 58.1-4018.1, 60.2-632, 63.2-1509, or 63.2-1727.

189 The reports shall contain such information as is required by the Exchange and shall be accompanied
190 by fingerprints of the individual arrested for each charge. Effective January 1, 2006, the corresponding
191 photograph of the individual arrested shall accompany the report. Fingerprint cards prepared by a
192 law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the
193 Exchange for transmittal to the appropriate bureau. Nothing in this section shall preclude each local
194 law-enforcement agency from maintaining its own separate photographic database. Fingerprints and
195 photographs required to be taken pursuant to this subsection or subdivision A 3e 6 of § 19.2-123 may
196 be taken at the facility where the magistrate is located, including a regional jail, even if the accused is
197 not committed to jail.

198 2. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall
199 not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the
200 conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court defers or
201 dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; or (iii) an acquittal by reason
202 of insanity pursuant to § 19.2-182.2 is entered. Upon such conviction or acquittal, the court shall remand
203 the individual to the custody of the office of the chief law-enforcement officer of the county or city. It
204 shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer,
205 to ensure that such report is completed for each charge after a determination of guilt or acquittal by
206 reason of insanity. The court shall require the officer to complete the report immediately following the
207 person's conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the
208 court has imposed a jail sentence to be served by him or ordered him committed to the custody of the
209 Commissioner of Behavioral Health and Developmental Services.

210 3. For persons arrested on a *capias* for any allegation of a violation of the terms or conditions of a
211 suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306, or 53.1-165, a
212 report shall be made to the Central Criminal Records Exchange pursuant to subdivision 1. Upon finding
213 such person in violation of the terms or conditions of a suspended sentence or probation for such felony
214 offense, the court shall order that the fingerprints and photograph of such person be taken by a
215 law-enforcement officer for each such offense and submitted to the Central Criminal Records Exchange.

216 4. For any person served with a show cause for any allegation of a violation of the terms or
217 conditions of a suspended sentence or probation for a felony offense pursuant to § 18.2-456, 19.2-306,
218 or 53.1-165, such report to the Central Criminal Records Exchange shall not be required until such
219 person is found to be in violation of the terms or conditions of a suspended sentence or probation for
220 such felony offense. Upon finding such person in violation of the terms or conditions of a suspended
221 sentence or probation for such felony offense, the court shall order that the fingerprints and photograph
222 of such person be taken by a law-enforcement officer for each such offense and submitted to the Central
223 Criminal Records Exchange.

224 5. If the accused is in custody when an indictment or presentment is found or made, or information
225 is filed, and no process is awarded, the attorney for the Commonwealth shall so notify the court of such
226 at the time of first appearance for each indictment, presentment, or information for which a report is
227 required upon arrest pursuant to subdivision 1, and the court shall order that the fingerprints and
228 photograph of the accused be taken for each offense by a law-enforcement officer or by the agency that
229 has custody of the accused at the time of first appearance. The law-enforcement officer or agency taking
230 the fingerprints and photograph shall submit a report to the Central Criminal Records Exchange for each
231 offense.

232 B. Within 72 hours following the receipt of (i) a warrant or *capias* for the arrest of any person on a
233 charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the
234 law-enforcement agency which received the warrant shall enter the person's name and other appropriate
235 information required by the Department of State Police into the "information systems" known as the
236 Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant
237 to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC),
238 maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of
239 birth, social security number and such other known information which the State Police or Federal
240 Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the
241 warrant or *capias* may transfer information electronically into VCIN. When the information is
242 electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or *capias*
243 to the local police department or sheriff's office. When criminal process has been ordered destroyed

pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of any information relating to the destroyed criminal process from the VCIN and NCIC.

B1. Within 72 hours following the receipt of a written statement issued by a parole officer pursuant to § 53.1-149 or 53.1-162 authorizing the arrest of a person who has violated the provisions of his post-release supervision or probation, the law-enforcement agency that received the written statement shall enter, or cause to be entered, the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52.

C. For offenses not charged on a summons in accordance with § 19.2-74, the clerk of each circuit court and district court shall make an electronic report to the Central Criminal Records Exchange of (i) any dismissal, including a dismissal pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2, indefinite postponement or continuance, charge still pending due to mental incompetency or incapacity, deferral, nolle prosequi, acquittal, or conviction of, including any sentence imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection A, including any action that may have resulted from an indictment, presentment or information, or any finding that the person is in violation of the terms or conditions of a suspended sentence or probation for a felony offense and (ii) any adjudication of delinquency based upon an act that, if committed by an adult, would require fingerprints to be filed pursuant to subsection A. For offenses listed in subsection A and charged on a summons in accordance with § 19.2-74, such electronic report by the clerk of each circuit court and district court to the Central Criminal Records Exchange may be submitted but shall not be required until (a) a conviction is entered and no appeal is noted or, if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (b) the court defers or dismisses the proceeding pursuant to § 18.2-57.3, 18.2-251, or 19.2-303.2; or (c) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. The clerk of each circuit court shall make an electronic report to the Central Criminal Records Exchange of any finding that a person charged on a summons is in violation of the terms or conditions of a suspended sentence or probation for a felony offense. In the case of offenses not required to be reported to the Exchange by subsection A, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest record required to be maintained by § 15.2-1722. Upon conviction of any person, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for which registration is required as defined in § 9.1-902, the clerk shall within seven days of sentencing submit a report to the Sex Offender and Crimes Against Minors Registry. The report to the Registry shall include the name of the person convicted and all aliases that he is known to have used, the date and locality of the conviction for which registration is required, his date of birth, social security number, and last known address, and specific reference to the offense for which he was convicted. No report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or capias into the VCIN.

D. In addition to those offenses enumerated in subsection A, the Central Criminal Records Exchange may receive, classify, and file any other fingerprints, photographs, and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution or the Department of Corrections. Unless otherwise prohibited by law, any such fingerprints, photographs, and records received by the Central Criminal Records Exchange from any correctional institution or the Department of Corrections may be classified and filed as criminal history record information.

E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining correctional status information, as required by the regulations of the Department of Criminal Justice Services, with respect to individuals about whom reports have been made under the provisions of this chapter shall make reports of changes in correctional status information to the Central Criminal Records Exchange. The reports to the Exchange shall include any commitment to or release or escape from a state or local correctional facility, including commitment to or release from a parole or probation agency.

F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to the Exchange by the office of the Secretary of the Commonwealth.

305 G. Officials responsible for reporting disposition of charges, and correctional changes of status of
306 individuals under this section, including those reports made to the Registry, shall adopt procedures
307 reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible
308 by the most expeditious means and in no instance later than 30 days after occurrence of the disposition
309 or correctional change of status and (ii) to report promptly any correction, deletion, or revision of the
310 information.

311 H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records
312 Exchange shall notify all criminal justice agencies known to have previously received the information.

313 I. As used in this section:

314 "Chief law-enforcement officer" means the chief of police of cities and towns and sheriffs of
315 counties, unless a political subdivision has otherwise designated its chief law-enforcement officer by
316 appropriate resolution or ordinance, in which case the local designation shall be controlling.

317 "Electronic report" means a report transmitted to, or otherwise forwarded to, the Central Criminal
318 Records Exchange in an electronic format approved by the Exchange. The report shall contain the name
319 of the person convicted and all aliases which he is known to have used, the date and locality of the
320 conviction, his date of birth, social security number, last known address, and specific reference to the
321 offense including the Virginia Code section and any subsection, the Virginia crime code for the offense,
322 and the offense tracking number for the offense for which he was convicted.