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HOUSE BILL NO. 652

Offered January 8, 2020

Prefiled January 6, 2020

A BILL to amend and reenact §§ 19.2-120, 19.2-120.1, and 19.2-124 of the Code of Virginia, relating to admission to bail; presumption of release on recognizance.

Patrons—Subramanyam and Kory

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-120, 19.2-120.1, and 19.2-124 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-120. Admission to bail.

A. 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.

B. The judicial officer shall release on recognizance without bond or other conditions of release any person taken into custody pursuant to § 19.2-82 by an arresting officer for any violation committed in such arresting officer's presence, which offense is a violation of any county, city, or town ordinance or of any provision of this Code punishable as a Class 1 or Class 2 misdemeanor or any other misdemeanor for which he may receive a jail sentence, except as otherwise provided in Title 46.2, for offenses listed in subsection D of § 19.2-81, or an offense giving rise to a rebuttable presumption against bail as set out in subsection D or E.

C. Except as provided in subsection B, 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.~~ D. 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;

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

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

62 14. A violation of § 18.2-51.6 if the alleged victim is a family or household member as defined in
63 § 16.1-228; or

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

65 ~~E.~~ *E.* The judicial officer shall presume, subject to rebuttal, that no condition or combination of
66 conditions will reasonably assure the appearance of the person or the safety of the public if the person is
67 being arrested pursuant to § 19.2-81.6.

68 ~~D.~~ *F.* A judicial officer who is a magistrate, clerk, or deputy clerk of a district court or circuit court
69 may not admit to bail, that is not set by a judge, any person who is charged with an offense giving rise
70 to a rebuttable presumption against bail as set out in subsection ~~B D~~ or ~~E~~ without the concurrence of
71 an attorney for the Commonwealth. For a person who is charged with an offense giving rise to a
72 rebuttable presumption against bail, any judge may set or admit such person to bail in accordance with
73 this section after notice and an opportunity to be heard has been provided to the attorney for the
74 Commonwealth.

75 ~~E.~~ *G.* The court shall consider the following factors and such others as it deems appropriate in
76 determining, for the purpose of rebuttal of the presumption against bail described in subsection ~~B D~~ or
77 *E*, whether there are conditions of release that will reasonably assure the appearance of the person as
78 required and the safety of the public:

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

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

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

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

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

97 **§ 19.2-120.1. Presumption of no bail for illegal aliens charged with certain crimes.**

98 A. In addition to the presumption against the admission to bail under subsection ~~B D~~ of § 19.2-120,
99 the judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will
100 reasonably assure the appearance of the person or the safety of the public if (i) the person is currently
101 charged with an offense listed in subsection A of § 19.2-297.1, subsection C of § 17.1-805, any offense
102 under Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 except any offense under subsection A of § 18.2-57.2,
103 any felony offense under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or any offense under
104 Article 2 (§ 18.2-266 et seq.), or any local ordinance substantially similar thereto, 4 (§ 18.2-279 et seq.),
105 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), 6.1 (§ 18.2-307.1 et seq.), or 7 (§ 18.2-308.1 et seq.) of
106 Chapter 7 of Title 18.2, and (ii) the person has been identified as being illegally present in the United
107 States by United States Immigration and Customs Enforcement.

108 B. Notwithstanding subsection A, no presumption shall exist under this section as to any
109 misdemeanor offense, or any felony offense under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title
110 18.2, unless United States Immigration and Customs Enforcement has guaranteed that, in all such cases
111 in the Commonwealth, it will issue a detainer for the initiation of removal proceedings and agree to
112 reimburse for the cost of incarceration from the time of the issuance of the detainer.

113 **§ 19.2-124. Appeal from bail, bond, or recognizance order.**

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

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

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

121 which the case is pending.

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

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

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

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

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

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

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