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HOUSE BILL NO. 263

Offered January 10, 1996

A BILL to amend and reenact §§ 19.2-81, 19.2-123, and 19.2-128 of the Code of Virginia, relating to violating specific conditions of release.

Patrons—Kilgore and Phillips

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 19.2-81, 19.2-123, 19.2-128 and 19.2-134 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-81. Arrest without warrant authorized in certain cases.

Members of the State Police force of the Commonwealth, the sheriffs of the various counties and cities, and their deputies, the members of any county police force, the members of any duly constituted police force of any city or town of the Commonwealth, the Commissioner, members and employees of the Marine Resources Commission granted the power of arrest pursuant to § 28.2-900, regular game wardens appointed pursuant to § 29.1-200, United States Coast Guard and United States Coast Guard Reserve commissioned, warrant, and petty officers authorized under § 29.1-205 to make arrests, and the special policemen of the counties as provided by § 15.1-144, provided such officers are in uniform, or displaying a badge of office, may arrest, without a warrant, any person who commits any crime in the presence of such officer and any person whom he has reasonable grounds or probable cause to suspect of having committed a felony not in his presence. Any such officer may arrest without a warrant any person whom the officer has probable cause to suspect of operating a watercraft or motor boat while intoxicated in violation of subsection B of § 29.1-738, in his presence, and such officer may thereafter transfer custody of the person suspected of the violation to another officer, who may obtain a warrant based upon statements made to him by the arresting officer.

Any such officer may, at the scene of any accident involving a motor vehicle, watercraft as defined in § 29.1-712 or motorboat, or at any hospital or medical facility to which any person involved in such accident has been transported, or in the apprehension of any person charged with the theft of any motor vehicle, on any of the highways or waters of the Commonwealth, upon reasonable grounds to believe, based upon personal investigation, including information obtained from eyewitnesses, that a crime has been committed by any person then and there present, apprehend such person without a warrant of arrest.

Such officers may arrest, without a warrant, persons duly charged with a crime in another jurisdiction upon receipt of a photocopy of a warrant, telegram, computer printout, facsimile printout, a radio, telephone or teletype message, in which photocopy of a warrant, telegram, computer printout, facsimile printout, radio, telephone or teletype message shall be given the name or a reasonably accurate description of such person wanted and the crime alleged.

Such officers may arrest, without a warrant, for an alleged misdemeanor not committed in his presence when the officer receives a radio message from his department or other law-enforcement agency within the Commonwealth that a warrant for such offense is on file. Such officers may also arrest without a warrant for an alleged misdemeanor not committed in their presence involving (i) shoplifting in violation of § 18.2-96 or § 18.2-103 or a similar local ordinance, (ii) carrying a weapon on school property in violation of § 18.2-308.1, (iii) assault and battery or (iv) destruction of property in violation of § 18.2-137, when such property is located on premises used for business or commercial purposes, or a similar local ordinance, when any such arrest is based on probable cause upon reasonable complaint of the person who observed the alleged offense. The arresting officer may issue a summons to any person arrested under this section for a misdemeanor violation involving shoplifting. *Such officers may also arrest, without a warrant, a person in violation of 19.2-128 involving specific conditions for release; provided, the officer has probable cause to believe that the person has violated or is violating a specific condition of release.*

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

A. If any judicial officer has brought before him any person held in custody and charged with an offense, other than an offense punishable by death, or a juvenile taken into custody pursuant to § 16.1-246, the judicial officer shall consider the release pending trial or hearing of the accused on his recognizance.

In the case of a juvenile or in any case where the judicial officer determines that such a release will not reasonably assure the appearance of the accused as required, the judicial officer shall then, either in

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60 lieu of or in addition to the above methods of release, impose any one or any combination of the
61 following conditions of release which will reasonably assure the appearance of the accused or juvenile
62 for trial or hearing:

63 1. Place the person in the custody of a designated person or organization agreeing to supervise him
64 or in the custody and under the supervision of a pretrial services agency which, for the purposes of this
65 section, shall not include a court services unit established pursuant to § 16.1-233;

66 2. Place restrictions on the travel, association or place of abode of the person during the period of
67 release and restrict contacts with household members for a period not to exceed seventy-two hours;

68 2a. Require the execution of an unsecured bond;

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

74 4. Impose any other condition deemed reasonably necessary to assure appearance as required, and to
75 assure his good behavior pending trial, including a condition requiring that the person return to custody
76 after specified hours or be placed on home electronic incarceration pursuant to § 53.1-131.2.

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

78 In addition, where the accused is a resident of a state training center for the mentally retarded, the
79 judicial officer may place the person in the custody of the director of the state facility, if the director
80 agrees to accept custody. Such director is hereby authorized to take custody of such person and to
81 maintain him at the training center prior to a trial or hearing under such circumstances as will
82 reasonably assure the appearance of the accused for the trial or hearing.

83 B. In any jurisdiction served by a pretrial services agency which offers a drug testing program
84 approved for the purposes of this subsection by the chief general district court judge, any such accused
85 or juvenile charged with a crime may be requested by such agency to give voluntarily a urine sample.
86 This sample may be analyzed for the presence of phencyclidine (PCP), barbiturates, cocaine, opiates or
87 such other drugs as the agency may deem appropriate prior to any hearing to establish bail. The judicial
88 officer and agency shall inform the accused or juvenile being tested that test results shall be used by a
89 judicial officer only at a bail hearing and only to determine appropriate conditions of release or to
90 reconsider the conditions of bail at a subsequent hearing. All test results shall be confidential with
91 access thereto limited to judicial officers, the attorney for the Commonwealth, defense counsel and, in
92 cases where a juvenile is tested, the parents or legal guardian or custodian of such juvenile. However, in
93 no event shall the judicial officer have access to any test result prior to making a bail release
94 determination or to determining the amount of bond, if any. Following this determination, the judicial
95 officer shall consider the test results and the testing agency's report and accompanying recommendations,
96 if any, in setting appropriate conditions of release. In no event shall a decision regarding a release
97 determination be subject to reversal on the sole basis of such test results. Any accused or juvenile whose
98 urine sample has tested positive for such drugs and who is admitted to bail may, as a condition of
99 release, be ordered to refrain from use of alcohol or illegal drugs and may be required to be tested on a
100 periodic basis until final disposition of his case to ensure his compliance with the order. ~~Sanctions~~
101 *Notwithstanding the provisions of §19.2-128, sanctions* for a violation of any condition of release, which
102 violations shall include subsequent positive drug test results or failure to report as ordered for testing,
103 may be imposed in the discretion of the judicial officer and may include imposition of more stringent
104 conditions of release, contempt of court proceedings or revocation of release. Any test given under the
105 provisions of this subsection which yields a positive drug test result shall be reconfirmed by a second
106 test if the person tested denies or contests the initial drug test positive result. The results of any drug
107 test conducted pursuant to this subsection shall not be admissible in any judicial proceeding other than
108 for the imposition of sanctions for a violation of a condition of release.

109 C. [Repealed.]

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

114 § 19.2-128. Penalties for failing to appear and violating conditions of release.

115 A. Whoever, having been released pursuant to this chapter or on a summons pursuant to § 19.2-73 or
116 § 19.2-74, willfully fails to appear before any court or judicial officer as required, shall, after notice to
117 all interested parties, incur a forfeiture of any security which may have been given or pledged for his
118 release, unless one of the parties can show good cause for excusing the absence, or unless the court, in
119 its sound discretion, shall determine that neither the interests of justice nor the power of the court to
120 conduct orderly proceedings will be served by such forfeiture.

121 B. Any person charged with a felony offense who willfully fails to appear before any court as

122 required shall be guilty of a Class 6 felony. Any person charged with a misdemeanor offense who
123 willfully fails to appear before any court as required shall be guilty of a Class 1 misdemeanor.

124 *C. A person who violates any other specific condition of release shall be guilty of a Class 1*
125 *misdemeanor.*

126 *It shall be the duty of the clerk of the court in which, or in the clerk's office of which, any*
127 *recognizance is filed, to deliver a copy of the court order containing the conditions of bail to the local*
128 *police or sheriff's office.*

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