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SENATE BILL NO. 444

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 11, 1996)

(Patron Prior to Substitute—Senator Benedetti)

A BILL to amend and reenact § 19.2-123 of the Code of Virginia, relating to bail.

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-123 of the Code of Virginia is amended and reenacted as follows:

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

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

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

2a. Require the execution of an unsecured bond; *however, if the judicial officer finds that a person arrested for a felony has previously been convicted of a felony or is presently on bond in any jurisdiction or is on probation or parole for a felony, the person may be released only upon a secure bond;*

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

4. 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.

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

In addition, where the accused is a resident of a state training center for the mentally retarded, the judicial officer may place the person in the custody of the director of the state facility, if the director agrees to accept custody. Such director is hereby authorized to take custody of such person 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 testing program approved for the purposes of this subsection by the chief general district court judge, any such accused or juvenile charged with a crime may be requested by such agency to give voluntarily a urine sample. This 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 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 test results shall be confidential with access thereto limited to judicial officers, the attorney for the Commonwealth, defense counsel and, in cases where a juvenile is tested, the parents or legal guardian or custodian of such juvenile. However, in no event shall the judicial officer have access to any 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 test results and the 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 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

60 violation of any condition of release, which violations shall include subsequent positive drug test results
61 or failure to report as ordered for testing, may be imposed in the discretion of the judicial officer and
62 may include imposition of more stringent conditions of release, contempt of court proceedings or
63 revocation of release. Any test given under the provisions of this subsection which yields a positive drug
64 test result shall be reconfirmed by a second test if the person tested denies or contests the initial drug
65 test positive result. The results of any drug test conducted pursuant to this subsection shall not be
66 admissible in any judicial proceeding other than for the imposition of sanctions for a violation of a
67 condition of release.

68 C. [Repealed.]

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