994821120

HOUSE BILL NO. 1691

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice on February 17, 1999)

(Patron Prior to Substitute—Delegate Baker)

A BILL to amend and reenact §§ 8.01-508, 16.1-135, 18.2-308.1, 18.2-308.2, 18.2-308.4, 19.2-119, 19.2-120, 19.2-121, 19.2-123, 19.2-124, 19.2-125, 19.2-127, 19.2-132, 19.2-150, 19.2-152.2, 19.2-152.3, 19.2-152.4, 19.2-158, 19.2-186, 19.2-398, 19.2-406, 46.2-936 and 53.1-109 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 19.2-80.2; and to repeal § 19.2-126 of the Code of Virginia, relating to bail; procedures; findings and unlawful possession of firearms; penalty.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-508, 16.1-135, 18.2-308.1, 18.2-308.2, 18.2-308.4, 19.2-119, 19.2-120, 19.2-121, 19.2-123, 19.2-124, 19.2-125, 19.2-127, 19.2-132, 19.2-150, 19.2-152.2, 19.2-152.3, 19.2-152.4, 19.2-158, 19.2-186, 19.2-398, 19.2-406, 46.2-936 and 53.1-109 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 19.2-80.2 as follows:

§ 8.01-508. How debtor may be arrested and held to answer.

If any person summoned under § 8.01-506 fails to appear and answer, or makes any answers which are deemed by the commissioner or court to be evasive, or if, having answered, fails to make such conveyance and delivery as is required by § 8.01-507, the commissioner or court shall issue (i) a capias directed to any sheriff requiring such sheriff to take the person in default and deliver him to the commissioner or court so that he may be compelled to make proper answers, or such conveyance or delivery, as the case may be or (ii) a rule to show cause why the person summoned should not appear and make proper answer or make conveyance and delivery. If the person in default fails to answer or convey and deliver he may be incarcerated until he makes such answers or conveyance and delivery. Where a capias is issued, the person in default shall be ~~entitled to bail pursuant to § 19.2-120~~ *admitted to bail as provided in Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2* if he cannot be brought promptly before the commissioner or court in the county or city to which the capias is returnable. Upon making such answers, or such conveyance and delivery, he shall be discharged by the commissioner or the court. He may also be discharged by the court from whose clerk's office the capias issued in any case where the court is of the opinion that he was improperly committed or is improperly or unlawfully detained in custody. If the person in default appeals the decision of the commissioner or court, he shall be ~~entitled to bail pursuant to § 19.2-120~~ *admitted to bail as provided in Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2*.

If the person held for failure to appear and answer interrogatories is detained in a jurisdiction other than that where the summons is issued, the sheriff in the requesting jurisdiction shall have the duty to transport such person to the place where interrogatories are to be taken.

§ 16.1-135. Bail and recognizance; papers filed with circuit court.

A person who has been convicted of an offense in a district court and who has noted an appeal, either at the time judgment is rendered or subsequent to its entry, shall be given credit for any bond that he may have posted in the court from which he appeals and shall be treated in accordance with the provisions of ~~§§ 19.2-123 and 19.2-124~~ *Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2*. Any new bond which may be required for the release of such person pending the appeal shall be given before the judge or the clerk of the district court and treated in accordance with ~~§§ 19.2-123 and 19.2-124~~ *Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2*; however, if the judge or clerk is not available to take the bond, the bond may be given before a magistrate of the jurisdiction. Whenever an appeal is taken and the ten-day period prescribed by § 16.1-133 has expired the papers shall be promptly filed with the clerk of the circuit court.

§ 18.2-308.1. Possession of firearm, stun weapon, or other weapon on school property prohibited.

A. If any person ~~has in his possession~~ *possesses* any (i) stun weapon or taser as defined in this section or (ii) weapon, other than a firearm, designated in subsection A of § 18.2-308 upon (i) the property of any public, private or parochial elementary, middle or high school, including buildings and grounds, (ii) that portion of any property open to the public used for school-sponsored functions or extracurricular activities while such functions or activities are taking place, or (iii) any school bus owned or operated by any such school, he shall be guilty of a Class 1 misdemeanor.

B. If any person ~~has in his possession~~ *possesses* any firearm designed or intended to propel a missile of any kind while such person is upon (i) any public, private or parochial elementary, middle or high school, including buildings and grounds, (ii) that portion of any property open to the public used

for school-sponsored functions or extracurricular activities while such functions or activities are taking place, or (iii) any school bus owned or operated by any such school, he shall be guilty of a Class 6 felony*; however, if the person possesses any firearm within a public, private or parochial elementary, middle or high school building and intends to use, or attempts to use, such firearm, or displays such weapon in a threatening manner, such person shall not be eligible for probation and shall be sentenced to a minimum, mandatory term of imprisonment of five years, which shall not be suspended in whole or in part and which shall be served consecutively with any other sentence*.

The exemptions set out in § 18.2-308 shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to persons who possess such weapon or weapons as a part of the curriculum or other programs sponsored by the school or any organization permitted by the school to use its premises or to any law-enforcement officer while engaged in his duties as such. In addition, this section shall not apply to possession of an unloaded firearm which is in a closed container in or upon a motor vehicle or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle.

As used in this section:

"Stun weapon" means any mechanism that is (i) designed to emit an electronic, magnetic, or other type of charge that exceeds the equivalency of a five milliamp sixty hertz shock and (ii) used for the purpose of temporarily incapacitating a person; and

"Taser" means any mechanism that is (i) designed to emit an electronic, magnetic, or other type of charge or shock through the use of a projectile and (ii) used for the purpose of temporarily incapacitating a person.

§ 18.2-308.2. Possession or transportation of firearms or concealed weapons by convicted felons; penalties; petition for permit; when issued.

A. It shall be unlawful for (i) any person who has been convicted of a felony or (ii) any person under the age of twenty-nine who was found guilty as a juvenile fourteen years of age or older at the time of the offense of a delinquent act which would be a felony if committed by an adult, whether such conviction or adjudication occurred under the laws of this Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, to knowingly and intentionally possess or transport any firearm or to knowingly and intentionally carry about his person, hidden from common observation, any weapon described in § 18.2-308 A. ~~A violation of this section shall be punishable as a~~ *Any person who violates this section shall be guilty of a* Class 6 felony*, however, any person who violates this section by knowingly and intentionally possessing or transporting any firearm, shall not be eligible for probation, and shall be sentenced to a minimum, mandatory term of imprisonment of five years, which shall not be suspended in whole or in part and which shall be served consecutively with any other sentence*. Any firearm or any concealed weapon possessed, transported or carried in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.

B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm or other weapon while carrying out his duties as a member of the armed forces of the United States or of the National Guard of Virginia or of any other state, (ii) any law-enforcement officer in the performance of his duties, or (iii) any person who has been pardoned or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms.

C. Any person prohibited from possessing, transporting or carrying a firearm under subsection A, may petition the circuit court of the jurisdiction in which he resides for a permit to possess or carry a firearm. The court may, in its discretion and for good cause shown, grant such petition and issue a permit. The provisions of this section shall not apply to any person who has been granted a permit pursuant to this subsection.

§ 18.2-308.4. Possession of firearms while in possession of certain controlled substances.

A. ~~Any~~ *It shall be unlawful for any* person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 ~~who~~ *to* simultaneously with knowledge and intent ~~possesses~~ *possess* any firearm~~, shall be guilty of a Class 6 felony~~.

B. It shall be unlawful for any person to possess, use, or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit the illegal manufacture, sale, distribution, or the possession with the intent to manufacture, sell, or distribute a controlled substance classified in Schedule I or Schedule II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 or more than one pound of marijuana.

Violation of this ~~subsection~~ *section* shall constitute a separate and distinct felony and any person convicted thereof *shall be guilty of a Class 6 felony, shall not be eligible for probation, and* shall be sentenced to a *minimum, mandatory* term of imprisonment of ~~three years for a first conviction and for a term of~~ five years ~~for a second or subsequent conviction under this subsection~~*, which shall not be*

suspended in whole or in part. ~~Notwithstanding any other provision of law, the sentence prescribed for a violation of this subsection shall not be suspended in whole or in part, nor shall anyone convicted hereunder be placed on probation or parole for this offense.~~ Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

C. Any firearm possessed in violation of this section shall be forfeited to the Commonwealth pursuant to the provisions of § 18.2-310.

§ 19.2-80.2. Duty of arresting officer; providing magistrate or court with criminal history information.

In any case in which an officer proceeds under §§ 19.2-76, 19.2-80 and 19.2-82, such officer shall, to the extent possible, obtain and provide the magistrate or court with a copy or summary of the arrested person's criminal history information prior to any proceeding under Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title. A pretrial service program established pursuant to § 19.2-152.4 may, in lieu of the arresting officer, provide the criminal history to the magistrate or court.

§ 19.2-119. Definitions.

As used in this chapter:

"Bail" means the pretrial release of a person from custody upon those terms and conditions specified by order of an appropriate judicial officer.

"Bond" means the posting by a person or his surety of a written promise to pay a specific sum, secured or unsecured, ordered by an appropriate judicial officer as a condition of bail to assure performance of the terms and conditions contained in the recognizance.

"Criminal history" means records and data collected by criminal justice agencies on persons, consisting of identifiable descriptions and notations of arrests, detentions, informations, indictments or other formal charges, and any dispositions arising therefrom.

"Judicial officer" means, unless otherwise indicated, any magistrate within his jurisdiction, any judge of a district court and the clerk or deputy clerk of any district court or circuit court within their respective cities and counties, any judge of a circuit court, any judge of the Court of Appeals and any justice of the Supreme Court of Virginia.

"Person" means any accused, or any juvenile taken into custody pursuant to § 16.1-246.

"Recognizance" means a signed commitment by a person to appear in court as directed and to adhere to any other terms ordered by an appropriate judicial officer as a condition of bail.

§ 19.2-120. Admission to bail.

~~An accused, or juvenile taken into custody pursuant to § 16.1-246~~ *Prior to conducting any hearing on the issue of bail, release or detention, the judicial officer shall, to the extent feasible, obtain a copy or summary of the person's criminal history.*

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 ~~as defined in § 19.2-119~~, 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.

~~If the judicial officer finds by clear and convincing evidence that (i) within the preceding sixteen years, the accused or juvenile was convicted of an offense listed in §§ 18.2-248, 18.2-248.01, 18.2-255, or § 18.2-255.2 that involves a Schedule I or II controlled substance, was previously convicted as a "drug kingpin" as defined in § 18.2-248, or was previously convicted of an act of violence as defined in § 19.2-297.1 and finds probable cause to believe that the accused or juvenile who is currently charged with one of these offenses committed the offense charged, or (ii) the accused or juvenile had previously been convicted of an offense listed in subsection B of § 18.2-67.5:2 and finds probable cause to believe that the accused or juvenile who is currently charged with one of these offenses committed the offense charged, then 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.~~

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 offense listed in subsection B of § 18.2-67.5:2 or 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 ten 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 minimum, mandatory 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 this Commonwealth or substantially similar laws of the United States; or

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.

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

§ 19.2-121. Fixing terms of bail.

If the ~~accused, or juvenile taken into custody pursuant to § 16.1-246,~~ *person* is admitted to bail, the terms thereof shall be such as, in the judgment of any official granting or reconsidering the same, will be reasonably fixed to assure the appearance of the accused and to assure his good behavior pending trial. The judicial officer shall take into account (i) the nature and circumstances of the offense; (ii) whether a firearm is alleged to have been used in the offense; (iii) the weight of the evidence; (iv) the financial resources of the accused or juvenile and his ability to pay bond; (v) the character of the accused or juvenile including his family ties, employment or involvement in education; (vi) his length of residence in the community; (vii) his record of convictions; (viii) his appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings; ~~and~~ (ix) *whether the person is likely to obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness, juror, or victim; and (x)* any other information available which the court considers relevant to the determination of whether the accused or juvenile is unlikely to appear for court proceedings.

In any case where the accused has appeared and otherwise met the conditions of bail, no bond therefor shall be used to satisfy fines and costs unless agreed to by the person who posted such bond.

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

A. ~~If any~~ *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,~~ *may* 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 *and supervision* of a designated person ~~or~~, organization ~~agreeing to supervise him or in the custody and under the supervision of a~~ *or* 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;

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~~

3a. Require that the person do any or all of the following: (i) maintain employment or, if unemployed, actively seek employment; (ii) maintain or commence an educational program; (iii) avoid all contact with an alleged victim of the crime and with any potential witness who may testify concerning the offense; (iv) comply with a specified curfew; (v) refrain from possessing a firearm, destructive device, or other dangerous weapon; (vi) refrain from excessive use of alcohol, or use of any illegal drug or any controlled substance not prescribed by a health care provider; and (vii) submit to testing for drugs and alcohol until the final disposition of his case; 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~~ *person* 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 violation of any condition of release, which violations shall include subsequent positive drug 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 test result shall be reconfirmed by a second test if the person tested denies or contests the initial drug test positive result. The results of any drug 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.

§ 19.2-124. Appeal from order denying bail or fixing terms of bond or recognizance.

A. If a ~~magistrate~~ ~~or~~ ~~other~~ judicial officer denies bail to ~~an~~ ~~accused~~ ~~or~~ ~~juvenile~~ ~~taken~~ ~~into~~ ~~custody~~ ~~pursuant~~ ~~to~~ ~~§ 16.1-246,~~ *a person,* requires excessive bond, or fixes unreasonable terms of a recognizance under ~~§ 19.2-123~~ *this article*, the ~~accused~~ ~~or~~ ~~juvenile~~ *person* may appeal therefrom successively to the next higher court or judge thereof, up to and including the Supreme Court of Virginia or any justice thereof where permitted by law.

B. If a court grants bail to a person or fixes a term of recognizance under this article over the objection of the attorney for the Commonwealth, the attorney for the Commonwealth may appeal therefrom successively to the next higher court or judge thereof, up to and including the Supreme Court of Virginia or any justice thereof.

§ 19.2-125. Release pending appeal from conviction in court not of record.

A person who has been convicted of an offense in a district court and who has noted an appeal shall be given credit for any bond that he may have posted in the court from which he appeals and shall be treated in accordance with the provisions of ~~§§ 19.2-123~~ ~~and~~ ~~19.2-124~~ *this article*.

§ 19.2-127. Conditions of release of material witness.

If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and it reasonably appears that it will be impossible to secure his presence by a subpoena, a judge shall inquire into the conditions of his release pursuant to ~~§ 19.2-123~~ *this article*.

§ 19.2-132. Motion to increase amount of bond fixed by magistrate or clerk; when bond may be increased.

A. Although a ~~party~~ *person* has been admitted to bail, if the amount of any bond is subsequently deemed insufficient, or the security taken inadequate, *or if it appears that bail should have been denied,* the attorney for the Commonwealth of the county or city in which the ~~accused~~ ~~or~~ ~~juvenile~~ ~~taken~~ ~~into~~ ~~custody~~ ~~pursuant~~ ~~to~~ ~~§ 16.1-246~~ *person* is held for trial may, on reasonable notice to the ~~accused~~ ~~or~~ ~~juvenile~~ *person* and to any surety on the bond of such ~~accused~~ ~~or~~ ~~juvenile~~*person,* move the court, or the appropriate judicial officer to increase the amount of such bond *or to revoke bail*. The court may, in accordance with subsection B, grant such motion and may require new or additional sureties therefor, or both *or revoke bail*. Any surety in a bond for the appearance of such ~~party~~ *person* may take from his principal collateral or other security to indemnify such surety against liability. The failure to notify the surety will not prohibit the court from proceeding with the bond hearing.

B. Subsequent to an initial appearance before any judicial officer where the conditions of bail have been determined, no ~~accused~~ ~~or~~ ~~juvenile~~ *person,* after having been released on a bond, shall be subject

to a motion to increase such bond *or revoke bail* unless (i) the ~~accused or juvenile~~ *person* has violated a term or condition of his release, or is convicted of or arrested for a felony or misdemeanor, or (ii) the attorney for the Commonwealth presents evidence that incorrect or incomplete information regarding the ~~accused's or juvenile's~~ *person's* family ties~~,~~*;* employment~~,~~*;* financial resources~~,~~*;* length of residence in the community~~,~~*;* record of convictions~~,~~*;* record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings~~,~~*; whether the person is likely to obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness, juror, or victim;* or other information relevant to the bond determination was relied upon by the court or magistrate establishing initial bond.

§ 19.2-150. Proceeding when surety surrenders principal.

If the surrender ~~be~~ *is* to the court, ~~it~~ *the court* shall make such order as it deems proper; if the surrender ~~be~~ *is* to a sheriff~~,~~ ~~sergeant~~ or jailer, the officer to whom the accused has been surrendered shall give the surety a certificate of the fact. After such surrender the ~~accused or juvenile~~ *person* shall be treated in accordance with the provisions of ~~§ 19.2-123~~ *Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title* unless the court or judge thereof has reason to believe that no one or more conditions of release will reasonably assure that the ~~accused or juvenile~~ *person* will not flee or pose a danger to any other person or to the community.

§ 19.2-152.2. Purpose; establishment of program.

It is the purpose of this article to provide more effective protection of society by establishing programs which will assist judicial officers in discharging their duties pursuant to ~~§§ 19.2-121 and 19.2-123~~ *Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title*. Such programs are intended to provide better information and services for use by judicial officers in determining the risk to public safety and the assurance of appearance of persons held in custody and charged with an offense, other than an offense punishable by death, who are pending trial or hearing. Any city, county or combination thereof may establish a pretrial services program and any city, county or combination thereof required to submit a community-based corrections plan pursuant to § 53.1-82.1 shall establish a pretrial services program.

§ 19.2-152.3. Department of Criminal Justice Services to prescribe standards; biennial plan.

The Department of Criminal Justice Services shall prescribe standards for the development, implementation, operation and evaluation of programs authorized by this article. The Department of Criminal Justice Services shall develop risk assessment and other instruments to be used by pretrial services programs in assisting judicial officers in discharging their duties pursuant to ~~§§ 19.2-121 and 19.2-123~~ *Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title*. Any city, county or combination thereof which establishes a pretrial services program pursuant to this article shall submit a biennial plan to the Department of Criminal Justice Services for review and approval.

§ 19.2-152.4. Mandated services.

Any city, county or combination thereof which elects or is required to establish a pretrial services program shall provide all information and services for use by judicial officers as set forth in ~~§§ 19.2-121 and 19.2-123~~ *Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title*.

§ 19.2-158. When person not free on bail shall be informed of right to counsel and amount of bail.

Every person charged with an offense described in § 19.2-157, who is not free on bail or otherwise, shall be brought before the judge of a court not of record, unless the circuit court issues process commanding the presence of the person, in which case the person shall be brought before the circuit court, on the first day on which such court sits after the person is charged, at which time the judge shall inform the accused of the amount of his bail and his right to counsel. *The court shall also hear and consider motions by the person or Commonwealth relating to bail or conditions of release pursuant to Article I (§ 19.2-119) et seq.) of Chapter 9 of this title.* If the court not of record sits on a day prior to the scheduled sitting of the court which issued process, the person shall be brought before the court not of record.

No hearing on the charges against the accused shall be had until the foregoing conditions have been complied with, and the accused shall be allowed a reasonable opportunity to employ counsel of his own choice, or, if appropriate, the statement of indigence provided for in § 19.2-159 may be executed.

§ 19.2-186. When accused to be discharged, tried, committed or bailed by judge.

The judge shall discharge the accused if he ~~consider~~ *considers* that there is not sufficient cause for charging him with the offense.

If a judge ~~consider~~ *considers* that there is sufficient cause only to charge the accused with an offense which the judge has jurisdiction to try, then he shall try the accused for such offense and convict him if he ~~deem~~ *deems* him guilty and pass judgment upon him in accordance with law just as if the accused had first been brought before him on a warrant charging him with such offense.

If a judge ~~consider~~ *considers* that there is sufficient cause to charge the accused with an offense that he does not have jurisdiction to try then he shall certify the case to the appropriate court having jurisdiction and shall commit the accused to jail or let him to bail pursuant to the provisions of ~~§ 19.2-123~~ *Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title*.

§ 19.2-398. When appeal by the Commonwealth in felony actions allowed.

A. A petition for appeal from a circuit court may be taken by the Commonwealth only in felony cases, before a jury is impaneled and sworn in a jury trial, or before the court begins to hear or receive evidence or the first witness is sworn, whichever occurs first, in a nonjury trial. The appeal may be taken from:

1. An order of a circuit court dismissing a warrant, information or indictment, or any count or charge thereof on the ground that a statute upon which it was based is unconstitutional; or

2. An order of a circuit court prohibiting the use of certain evidence at trial on the grounds such evidence was obtained in violation of the provisions of the Fourth, Fifth or Sixth Amendments to the Constitution of the United States or Article I, Section 8, 10 or 11 of the Constitution of Virginia prohibiting illegal searches and seizures and protecting rights against self-incrimination, provided the Commonwealth certifies the evidence is essential to the prosecution.

B. A petition for appeal may be taken by the Commonwealth in a felony case from any order of release on conditions pursuant to Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title.

C. Nothing in this chapter shall affect the Commonwealth's right to appeal in civil matters or cases involving a violation of law relating to the state revenue or appeals pursuant to § 17-116.08 or subsection C of § 19.2-317.

§ 19.2-406. Bail pending appeal pursuant to § 19.2-398.

Upon appeal being taken by the Commonwealth pursuant to § 19.2-398, if the defendant moves the trial court for release on bail, that court shall promptly, but in no event later than three days after the Commonwealth's notice of appeal is filed, hold a hearing to determine the issue of bail. The burden shall be upon the Commonwealth to show good cause why the bail should not be reduced or the accused released on his own recognizance. If it is determined that the accused shall be released on bail, bail shall be set and determined in accordance with ~~§§ 19.2-119 through 19.2-134~~ *Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title*.

§ 46.2-936. Arrest for misdemeanor; release on summons and promise to appear; right to demand hearing immediately or within twenty-four hours; issuance of warrant on request of officer for violations of §§ 46.2-301 and 46.2-302; refusal to promise to appear; violations.

Whenever any person is detained by or in the custody of an arresting officer, including an arrest on a warrant, for a violation of any provision of this title punishable as a misdemeanor, the arresting officer shall, except as otherwise provided in § 46.2-940, take the name and address of such person and the license number of his motor vehicle and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Such time shall be at least five days after such arrest unless the person arrested demands an earlier hearing. Such person shall, if he so desires, have a right to an immediate hearing, or a hearing within twenty-four hours at a convenient hour, before a court having jurisdiction under this title within the county, city, or town wherein such offense was committed. Upon the giving by such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody.

Notwithstanding the foregoing provisions of this section, if prior general approval has been granted by order of the general district court for the use of this section in cases involving violations of §§ 46.2-301 and 46.2-302, the arresting officer may take the person before the appropriate judicial officer of the county or city in which the violation occurred and make oath as to the offense and request issuance of a warrant. If a warrant is issued, the ~~magistrate~~ *judicial officer* shall proceed in accordance with the provisions of ~~§ 19.2-123~~ *Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2*.

Notwithstanding any other provision of this section, in cases involving a violation of § 46.2-341.24 or § 46.2-341.31, the arresting officer shall take the person before a magistrate as provided in §§ 46.2-341.26:2 and 46.2-341.26:3. The magistrate may issue either a summons or a warrant as he shall deem proper.

Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting officer before a magistrate or other issuing officer having jurisdiction who shall proceed according to the provisions of § 46.2-940.

Any person who willfully violates his written promise to appear, given in accordance with this section, shall be treated in accordance with the provisions of § 46.2-938.

Any officer violating any of the provisions of this section shall be guilty of misconduct in office and subject to removal therefrom upon complaint filed by any person in a court of competent jurisdiction. This section shall not be construed to limit the removal of a law-enforcement officer for other misconduct in office.

§ 53.1-109. Authority of jail superintendent and jail officers.

The jail superintendent shall have and exercise the same control and authority over the prisoners committed or transferred to a regional jail or jail farm as the sheriffs of this Commonwealth have by law over the prisoners committed or transferred to local jails.

During the term of their appointment the superintendent and jail officers are hereby invested with the powers and authority of a conservator of the peace (i) within the limits of such jail or jail farm and within one mile thereof, whether such jail or jail farm is situated within or beyond the limits of such political subdivisions establishing and maintaining the same; (ii) for the purpose of conveying prisoners to and from such jail or jail farm; (iii) for the purpose of enforcing the provisions of alternative incarceration or treatment programs pursuant to §§ 53.1-129, 53.1-131, and 53.1-131.2 and pretrial supervision programs operated pursuant to ~~§ 19.2-123~~ *Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2*; (iv) for the purpose of providing security and supervision of prisoners taken to a medical, dental, or psychiatric facility; and (v) for the purpose of providing a security escort and supervision of prisoners transported to a funeral or graveside service.

2. That § 19.2-126 of the Code of Virginia is repealed.

3. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is $ 23,049,750.