

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 19.2-120 and 19.2-390 of the Code of Virginia, relating to DUI; admission to bail; criminal history record information.

[S 442]

Approved

Be it enacted by the General Assembly of Virginia:**1. That §§ 19.2-120 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 ~~ten~~ 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 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~~ 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 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; or

8. A violation of § 18.2-46.5 or § 18.2-46.7; or

9. 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.

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

1. The nature and circumstances of the offense charged;

2. The history and characteristics of the person, including his character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

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

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

§ 19.2-390. 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

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57 other agencies.

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

65 a. Treason;

66 b. Any felony;

67 c. Any offense punishable as a misdemeanor under Title 54.1; or

68 d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, except an arrest
69 for a violation of § 18.2-119, ~~Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2~~, Article 2
70 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, or any similar ordinance of any county, city or town, or
71 (ii) under § 20-61.

72 The reports shall contain such information as is required by the Exchange and shall be accompanied
73 by fingerprints of the individual arrested. Fingerprint cards prepared by a law-enforcement agency for
74 inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the
75 appropriate bureau.

76 2. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall
77 not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the
78 conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court dismisses
79 the proceeding pursuant to § 18.2-251; or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2
80 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the
81 office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief
82 law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is
83 completed after a determination of guilt or acquittal by reason of insanity. The court shall require the
84 officer to complete the report immediately following the person's conviction or acquittal, and the
85 individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be
86 served by him or ordered him committed to the custody of the Commissioner of the Department of
87 Mental Health, Mental Retardation and Substance Abuse Services.

88 B. Within 72 hours following the receipt of (i) a warrant or *capias* for the arrest of any person on a
89 charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the
90 law-enforcement agency which received the warrant shall enter the person's name and other appropriate
91 information required by the Department of State Police into the "information systems" known as the
92 Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant
93 to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC),
94 maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of
95 birth, social security number and such other known information which the State Police or Federal
96 Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the
97 warrant or *capias* may transfer information electronically into VCIN. When the information is
98 electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or *capias*
99 to the local police department or sheriff's office. When criminal process has been ordered destroyed
100 pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of
101 any information relating to the destroyed criminal process from the VCIN and NCIC systems.

102 C. The clerk of each circuit court and district court shall make a report to the Central Criminal
103 Records Exchange of (i) any dismissal, indefinite postponement or continuance, charge still pending due
104 to mental incompetency or incapacity, *nolle prosequi*, acquittal, or conviction of, including any sentence
105 imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed
106 in subsection A, including any action which may have resulted from an indictment, presentment or
107 information, and (ii) any adjudication of delinquency based upon an act which, if committed by an
108 adult, would require fingerprints to be filed pursuant to subsection A. In the case of offenses not
109 required to be reported to the Exchange by subsection A, the reports of any of the foregoing dispositions
110 shall be filed by the law-enforcement agency making the arrest with the arrest record required to be
111 maintained by § 15.2-1722. Upon conviction of any person, including juveniles tried and convicted in
112 the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for
113 which registration is required as defined in § 9.1-902, the clerk shall within seven days of sentencing
114 submit a report to the Sex Offender and Crimes Against Minors Registry. The report to the Registry
115 shall include the name of the person convicted and all aliases which he is known to have used, the date
116 and locality of the conviction for which registration is required, his date of birth, social security number,
117 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 system.

D. In addition to those offenses enumerated in subsection A of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

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.

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

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

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