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HOUSE BILL NO. 1490

Offered January 20, 2006

A BILL to amend and reenact §§ 19.2-123, 19.2-143, and 38.2-2416 of the Code of Virginia, relating to secure bonds; time within which default is recorded; remittance; power of attorney to be filed with Department of Criminal Justice Services.

Patrons—Ware, O. and Griffith

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-123, 19.2-143, and 38.2-2416 of the Code of Virginia are amended and reenacted as follows:

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

A. Any person arrested for a felony who has previously been convicted of a felony, or who is presently on bond for an unrelated arrest in any jurisdiction, or who is on probation or parole, may be released only upon a secure bond. This provision may be waived with the approval of the judicial officer and with the concurrence of the attorney for the Commonwealth or the attorney for the county, city or town. Subject to the foregoing, when a person is arrested for either a felony or a misdemeanor, any judicial officer may impose any one or any combination of the following conditions of release:

1. Place the person in the custody and supervision of a designated person, organization 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. *A deed or deed of trust shall be required on any real estate bond posted by a person not licensed as a bail bondsman by the Department of Criminal Justice Services under Article 11 (§ 9.1-185 et seq.) of Chapter 1 of Title 9.1;*

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 or alcohol screening or testing program approved for the purposes of this subsection by the chief general district court judge, any such person charged with a crime may be requested by such agency to give voluntarily a urine sample, submit to a drug or alcohol screening, or take a breath test for presence of alcohol. A 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 screened or 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 screening or test results, and any pretrial

59 investigation report containing the screening or test results, shall be confidential with access thereto
60 limited to judicial officers, the attorney for the Commonwealth, defense counsel, other pretrial service
61 agencies, any criminal justice agency as defined in § 9.1-101 and, in cases where a juvenile is screened
62 or tested, the parents or legal guardian or custodian of such juvenile. However, in no event shall the
63 judicial officer have access to any screening or test result prior to making a bail release determination or
64 to determining the amount of bond, if any. Following this determination, the judicial officer shall
65 consider the screening or test results and the screening or testing agency's report and accompanying
66 recommendations, if any, in setting appropriate conditions of release. In no event shall a decision
67 regarding a release determination be subject to reversal on the sole basis of such screening or test
68 results. Any accused or juvenile whose urine sample has tested positive for such drugs and who is
69 admitted to bail may, as a condition of release, be ordered to refrain from use of alcohol or illegal drugs
70 and may be required to be tested on a periodic basis until final disposition of his case to ensure his
71 compliance with the order. Sanctions for a violation of any condition of release, which violations shall
72 include subsequent positive drug or alcohol test results or failure to report as ordered for testing, may be
73 imposed in the discretion of the judicial officer and may include imposition of more stringent conditions
74 of release, contempt of court proceedings or revocation of release. Any test given under the provisions
75 of this subsection which yields a positive drug or alcohol test result shall be reconfirmed by a second
76 test if the person tested denies or contests the initial drug or alcohol test positive result. The results of
77 any drug or alcohol test conducted pursuant to this subsection shall not be admissible in any judicial
78 proceeding other than for the imposition of sanctions for a violation of a condition of release.

79 C. [Repealed.]

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

84 § 19.2-143. Where default recorded; process on recognizance; forfeiture on recognizance; when copy
85 may be used; cash bond.

86 When a person, under recognizance in a case, either as party or witness, fails to perform the
87 condition of appearance thereof, if it is to appear before a court of record, or a district court, a hearing
88 shall be held upon reasonable notice to all parties affording them opportunity to show cause why the
89 recognizance or any part thereof should not be forfeited. The show cause notice shall be issued within
90 45 days of the breach of the condition of appearance.

91 If the court finds the recognizance or any part thereof should be forfeited, the default shall be
92 recorded therein, unless, the defendant or juvenile is brought before the court within ~~60~~ 150 days of the
93 findings of default. After ~~60~~ 150 days of the finding of default, his default shall be recorded therein, and
94 if it is to appear before a district court, his default shall be entered by the judge of such court, on the
95 case papers unless the defendant or juvenile has been delivered or appeared before the court. The
96 process on any such forfeited recognizance shall be issued from the court before which the appearance
97 was to be, and wherein such forfeiture was recorded or entered. Any such process issued by a judge
98 when the penalty of the recognizance so forfeited is in excess of the maximum jurisdictional amount
99 specified in § 16.1-77 (1) shall be made returnable to the circuit court of his county or city, and when
100 not in excess of such amount it shall be made returnable before, and tried by, such judge, who shall
101 promptly transmit to the clerk of the circuit court of his county or city wherein deeds are recorded an
102 abstract of such judgment as he may render thereon, which shall be forthwith docketed by the clerk of
103 such court.

104 If the defendant or juvenile appears before or is delivered to the court within ~~42~~ 24 months of the
105 findings of default, the court shall remit any bond previously ordered forfeited by the courts, less such
106 costs as the court may direct.

107 If it is brought to the attention of the court that the defendant or juvenile is incarcerated in another
108 state or country within 48 months of the finding of default, thereby preventing his delivery or
109 appearance within that period, the court shall remit any bond previously ordered forfeited. If the
110 defendant or juvenile left the Commonwealth with the permission of the court, the bond shall be
111 remitted without deduction of costs; otherwise, the cost of returning him to the Commonwealth shall be
112 deducted from the bond.

113 Evidence that the defendant or juvenile is incarcerated or subject to court process in another
114 jurisdiction on the day his appearance is required or a medical certificate from a duly licensed physician
115 that the defendant was physically unable to so appear shall be considered evidence of good cause why
116 the recognizance should not be forfeited.

117 If such recognizance so forfeited is not for such appearance, process thereon shall be issued from the
118 court in which it was taken, or the court to which it was made returnable, and in a proceeding in one
119 court on a recognizance entered in another a copy thereof shall be evidence in like manner as the
120 original would be if it had been entered in the court wherein the proceeding is being had thereon.

121 However, when any defendant or juvenile who posted a cash bond and failed to appear is tried in his
122 absence and is convicted, the court or judge trying the case shall first apply the cash bond, or so much
123 thereof as may be necessary, to the payment of any fines or costs, or both, adjudged against the
124 defendant or juvenile or imposed by law. Any remaining funds shall be forfeited without further notice.
125 However, if a rehearing is granted, the court may remit part or all of such cash bond not applied
126 ultimately to fines or costs, and order a refund of the same by the State Treasurer, but only if good
127 cause is shown.

128 If the defendant or juvenile posted a cash bond and failed to appear, but is not tried in his absence,
129 the bond shall be forfeited promptly without further notice. However, if the defendant or juvenile
130 appears in court within 60 days after the bond is forfeited, the judge may remit part or all of any bond
131 previously forfeited and order a refund of the same by the State Treasurer.

132 § 38.2-2416. Power of attorney to be recorded or attached; filing with the Department of Criminal
133 Justice Services.

134 A. Each power of attorney from a fidelity and surety insurer to an agent making the agent an
135 attorney-in-fact to execute any bail bond as defined in § 19.2-119 in the name and on behalf of the
136 insurer as surety, shall, unless the power of attorney is special and limited to one transaction or to
137 definitely stated transactions, ~~be duly acknowledged for recordation and recorded in the deed book in the~~
138 ~~clerk's office of each county or corporation in which the powers delegated by it are to be exercised be~~
139 *filed with the Department of Criminal Justice Services allowing the powers delegated by it to be*
140 *exercised in any city or county in the Commonwealth.*

141 B. Each power of attorney, or a copy or facsimile thereof, which may include a printed or facsimile
142 signature or corporate seal, from a fidelity and surety insurer to an agent making the agent an
143 attorney-in-fact to execute any bond or other obligation, other than a bail bond as defined in § 19.2-119,
144 in the name and on behalf of the insurer as surety, shall be duly attached to the bond or other
145 obligation.