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HOUSE BILL NO. 2106

Offered January 12, 2011

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A BILL to amend and reenact §§ 19.2-123, 19.2-152.4:3, and 19.2-303 of the Code of Virginia, relating to GPS tracking for persons on bond or probation.

Patrons—Armstrong, Kilgore, Sherwood and Ware, O.; Senators: Howell and Marsh

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-123, 19.2-152.4:3, and 19.2-303 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 72 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;

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;

3b. Place a prohibition on a person who holds an elected constitutional office and who is accused of a felony arising from the performance of his duties from physically returning to his constitutional office; 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 *or be subject to monitoring by a GPS (Global Positioning System) tracking device, or other similar device.*

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

INTRODUCED

HB2106

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

81 C. [Repealed.]

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

86 E. Nothing in this section shall be construed to prevent a court from imposing a recognizance or
87 bond designed to secure a spousal or child support obligation pursuant to § 16.1-278.16, Chapter 5
88 (§ 20-61 et seq.) of Title 20, or § 20-114 in addition to any recognizance or bond imposed pursuant to
89 this chapter.

90 § 19.2-152.4:3. Duties and responsibilities of local pretrial services officers.

91 A. Each local pretrial services officer, for the jurisdictions served, shall:

92 1. Investigate and interview defendants arrested on state and local warrants and who are detained in
93 jails located in jurisdictions served by the agency while awaiting a hearing before any court that is
94 considering or reconsidering bail, at initial appearance, advisement or arraignment, or at other
95 subsequent hearings;

96 2. Present a pretrial investigation report with recommendations to assist courts in discharging their
97 duties related to granting or reconsidering bail;

98 3. Supervise and assist all defendants residing within the jurisdictions served and placed on pretrial
99 supervision by any judicial officer within the jurisdictions to ensure compliance with the terms and
100 conditions of bail;

101 4. Conduct random drug and alcohol tests on any defendant under supervision for whom a judicial
102 officer has ordered testing or who has been required to refrain from excessive use of alcohol or use of
103 any illegal drug or controlled substance or other defendant-specific condition of bail related to alcohol or
104 substance abuse;

105 5. Seek a capias from any judicial officer pursuant to § 19.2-152.4:1 for any defendant placed under
106 supervision or the custody of the agency who fails to comply with the conditions of bail or supervision,
107 when continued liberty or noncompliance presents a risk of flight, a risk to public safety or risk to the
108 defendant;

109 6. Seek an order to show cause why the defendant should not be required to appear before the court
110 in those cases requiring a subsequent hearing before the court;

111 7. Provide defendant-based information to assist any law-enforcement officer with the return to
112 custody of defendants placed on supervision for which a capias has been sought; and

113 8. Keep such records and make such reports as required by the Commonwealth of Virginia
114 Department of Criminal Justice Services.

115 B. Each local pretrial services officer, for the jurisdictions served, may provide the following optional
116 services, as appropriate and when available resources permit:

117 1. Conduct, subject to court approval, drug and alcohol screenings, or tests at investigation pursuant
118 to subsection B of § 19.2-123 or following release to supervision, and conduct or facilitate the
119 preparation of screenings or assessments or both pursuant to state approved protocols;

120 2. Facilitate placement of defendants in a substance abuse education or treatment program or services

or other education or treatment service when ordered as a condition of bail;

3. Sign for the custody of any defendant investigated by a pretrial services officer, and released by a court to pretrial supervision as the sole term and condition of bail or when combined with an unsecured bond;

4. Provide defendant information and investigation services for those who are detained in jails located in jurisdictions served by the agency and are awaiting an initial bail hearing before a magistrate;

5. Supervise defendants placed by any judicial officer on home electronic monitoring *or monitoring by a GPS (Global Positioning System) tracking device or other similar device*, as a condition of bail and supervision;

6. Prepare, for defendants investigated, the financial statement-eligibility determination form for indigent defense services; and

7. Subject to approved procedures and if so requested by the court, coordinate for defendants investigated, services for court-appointed counsel and for interpreters for foreign-language speaking and hearing-impaired defendants.

§ 19.2-303. Suspension or modification of sentence; probation; taking of fingerprints and blood, saliva, or tissue sample as condition of probation.

After conviction, whether with or without jury, the court may suspend imposition of sentence or suspend the sentence in whole or part and in addition may place the defendant on probation under such conditions as the court shall determine, *including monitoring by a GPS (Global Positioning System) tracking device, or other similar device*, or may, as a condition of a suspended sentence, require the defendant to make at least partial restitution to the aggrieved party or parties for damages or loss caused by the offense for which convicted, or to perform community service, or both, under terms and conditions which shall be entered in writing by the court. If, however, the court suspends or modifies any sentence fixed by a jury pursuant to § 19.2-295, the court shall file a statement of the reasons for the suspension or modification in the same manner as the statement required pursuant to subsection B of § 19.2-298.01. The judge, after convicting the defendant of a felony, shall determine whether a copy of the defendant's fingerprints are on file at the Central Criminal Records Exchange. In any case where fingerprints are not on file, the judge shall require that fingerprints be taken as a condition of probation. Such fingerprints shall be submitted to the Central Criminal Records Exchange under the provisions of subsection D of § 19.2-390.

In those courts having electronic access to the Local Inmate Data System (LIDS) within the courtroom, prior to or upon sentencing, the clerk of court shall also determine by reviewing LIDS whether a blood, saliva, or tissue sample has been taken for DNA analysis and submitted to the DNA data bank maintained by the Department of Forensic Science pursuant to Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of this title. In any case in which the clerk has determined that a DNA sample or analysis is not stored in the DNA data bank, or in any case in which electronic access to LIDS is not available in the courtroom, the court shall order that the defendant appear within 30 days before the sheriff or probation officer and allow the sheriff or probation officer to take the required sample. The order shall also require that, if the defendant has not appeared and allowed the sheriff or probation officer to take the required sample by the date stated in the order, then the sheriff or probation officer shall report to the court the defendant's failure to appear and provide the required sample.

After conviction and upon sentencing of an active participant or member of a criminal street gang, the court may, as a condition for suspending the imposition of the sentence in whole or in part or for placing the accused on probation, place reasonable restrictions on those persons with whom the accused may have contact. Such restrictions may include prohibiting the accused from having contact with anyone whom he knows to be a member of a criminal street gang, except that contact with a family or household member, as defined in § 16.1-228, shall be permitted unless expressly prohibited by the court.

In any case where a defendant is convicted of a violation of § 18.2-48, 18.2-61, 18.2-63, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-370, or 18.2-370.1, committed on or after July 1, 2006, and some portion of the sentence is suspended, the judge shall order that the period of suspension shall be for a length of time at least equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, and the defendant shall be placed on probation for that period of suspension subject to revocation by the court. The conditions of probation may include such conditions as the court shall determine, including active supervision. Where the conviction is for a violation of clause (iii) of subsection A of § 18.2-61, subdivision A 1 of § 18.2-67.1, or subdivision A 1 of § 18.2-67.2, the court shall order that at least three years of the probation include active supervision of the defendant under a postrelease supervision program operated by the Department of Corrections, and for at least three years of such active supervision, the defendant shall be subject to electronic monitoring by means of a GPS (Global Positioning System) tracking device, or other similar device.

If a person is sentenced to jail upon conviction of a misdemeanor or a felony, the court may, at any time before the sentence has been completely served, suspend the unserved portion of any such sentence,

182 place the person on probation for such time as the court shall determine, or otherwise modify the
183 sentence imposed.

184 If a person has been sentenced for a felony to the Department of Corrections but has not actually
185 been transferred to a receiving unit of the Department, the court which heard the case, if it appears
186 compatible with the public interest and there are circumstances in mitigation of the offense, may, at any
187 time before the person is transferred to the Department, suspend or otherwise modify the unserved
188 portion of such a sentence. The court may place the person on probation for such time as the court shall
189 determine.

190 **2. The Department of Criminal Justice Services shall promulgate such rules and regulations as**
191 **may be necessary to implement the provisions of this act, which rules and regulations shall include**
192 **provisions governing (i) the certification of the Global Positioning System tracking devices**
193 **required by this act and (ii) the offering of such devices. The Department shall publish a list of**
194 **certified Global Positioning System tracking devices and shall ensure that such systems are**
195 **available throughout the Commonwealth.**