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## HOUSE BILL NO. 1365

Offered January 11, 2023

Prefiled July 18, 2022

A *BILL to amend and reenact §§ 19.2-120 and 19.2-124 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-120.2, relating to admission to bail; rebuttable presumptions against bail.*

Patrons—Williams, Brewer, Durant, Greenhalgh, Head, Kilgore, Marshall, O'Quinn, Robinson, Runion and Webert

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 19.2-120 and 19.2-124 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-120.2 as follows:**

**§ 19.2-120. Admission to bail.**

A. 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.

B. 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, family or household members as defined in § 16.1-228, or the public.

B. In making a determination under subsection A, the judicial officer shall consider all relevant information, including (i) the nature and circumstances of the offense; (ii) whether a firearm is alleged to have been used in the commission of the offense; (iii) the weight of the evidence; (iv) the history of the accused or juvenile, including his family ties or involvement in employment, education, or medical, mental health, or substance abuse treatment; (v) his length of residence in, or other ties to, the community; (vi) his record of convictions; (vii) his appearance at court proceedings or flight to avoid prosecution or convictions for failure to appear at court proceedings; and (viii) 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, victim, or family or household member as defined in § 16.1-228.

C. 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;
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 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 formerly 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 mandatory minimum 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 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 or a substantially similar offense under the laws of any state or the United States 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;
8. A violation of § 18.2-374.1 or 18.2-374.3 where the offender has reason to believe that the solicited person is under 15 years of age and the offender is at least five years older than the solicited person;
9. A violation of § 18.2-46.2, 18.2-46.3, 18.2-46.5, or 18.2-46.7;
10. 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

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58 *past five years of the instant offense, been convicted three times on different dates of a violation of any*  
59 *combination of these Code sections, or any ordinance of any county, city, or town or the laws of any*  
60 *other state or of the United States substantially similar thereto, and has been at liberty between each*  
61 *conviction;*

62 *11. A second or subsequent violation of § 16.1-253.2 or 18.2-60.4 or a substantially similar offense*  
63 *under the laws of any state or the United States;*

64 *12. A violation of subsection B of § 18.2-57.2;*

65 *13. A violation of subsection C of § 18.2-460 charging the use of threats of bodily harm or force to*  
66 *knowingly attempt to intimidate or impede a witness;*

67 *14. A violation of § 18.2-51.6 if the alleged victim is a family or household member as defined in §*  
68 *16.1-228; or*

69 *15. A violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1.*

70 *D. The judicial officer shall presume, subject to rebuttal, that no condition or combination of*  
71 *conditions will reasonably assure the appearance of the person or the safety of the public if the person*  
72 *is being arrested pursuant to § 19.2-81.6.*

73 *E. For a person who is charged with an offense giving rise to a rebuttable presumption against bail,*  
74 *any judicial officer may set or admit such person to bail in accordance with this section.*

75 *F. The judicial officer shall consider the following factors and such others as he deems appropriate*  
76 *in determining, for the purpose of rebuttal of the presumption against bail described in subsection B,*  
77 *whether there are conditions of release that will reasonably assure the appearance of the person as*  
78 *required and the safety of the public:*

79 *1. The nature and circumstances of the offense charged;*

80 *2. The history and characteristics of the person, including his character, physical and mental*  
81 *condition, family ties, employment, financial resources, length of residence in the community, community*  
82 *ties, past conduct, history relating to drug or alcohol abuse, criminal history, membership in a criminal*  
83 *street gang as defined in § 18.2-46.1, and record concerning appearance at court proceedings; and*

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

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

88 ~~D.~~ *H. If the judicial officer sets a secured bond and the person engages the services of a licensed*  
89 *bail bondsman, the magistrate executing recognizance for the accused shall provide the bondsman, upon*  
90 *request, with a copy of the person's Virginia criminal history record, if readily available, to be used by*  
91 *the bondsman only to determine appropriate reporting requirements to impose upon the accused upon his*  
92 *release. The bondsman shall pay a \$15 fee payable to the state treasury to be credited to the Literary*  
93 *Fund, upon requesting the defendant's Virginia criminal history record issued pursuant to § 19.2-389.*  
94 *The bondsman shall review the record on the premises and promptly return the record to the magistrate*  
95 *after reviewing it.*

96 **§ 19.2-120.2. Presumption of no bail for illegal aliens charged with certain crimes.**

97 *A. In addition to the presumption against the admission to bail under subsection C of § 19.2-120,*  
98 *the judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions will*  
99 *reasonably assure the appearance of the person or the safety of the public if (i) the person is currently*  
100 *charged with an offense listed in subsection A of § 19.2-297.1, an offense listed in subsection C of*  
101 *§ 17.1-805, any offense under Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 except any offense under*  
102 *subsection A of § 18.2-57.2, any felony offense under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title*  
103 *18.2, or any offense under Article 2 (§ 18.2-266 et seq.), or any local ordinance substantially similar*  
104 *thereto, 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), 6.1 (§ 18.2-307.1 et seq.),*  
105 *or 7 (§ 18.2-308.1 et seq.) of Chapter 7 of Title 18.2 and (ii) the person has been identified as being*  
106 *illegally present in the United States by U.S. Immigration and Customs Enforcement.*

107 *B. Notwithstanding subsection A, no presumption shall exist under this section as to any*  
108 *misdemeanor offense, or any felony offense under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title*  
109 *18.2, unless U.S. Immigration and Customs Enforcement has guaranteed that, in all such cases in the*  
110 *Commonwealth, it will issue a detainer for the initiation of removal proceedings and agree to reimburse*  
111 *for the cost of incarceration from the time of the issuance of the detainer.*

112 **§ 19.2-124. Appeal from bail, bond, or recognizance order.**

113 *A. If a judicial officer denies bail to a person, requires excessive bond, or fixes unreasonable terms*  
114 *of a recognizance under this article, the person may appeal the decision of the judicial officer.*

115 *If the initial bail decision on a charge brought by a warrant or district court capias is made by a*  
116 *magistrate, clerk, or deputy clerk, the person shall first appeal to the district court in which the case is*  
117 *pending.*

118 *If the initial bail decision on a charge brought by direct indictment or presentment or circuit court*  
119 *capias is made by a magistrate, clerk, or deputy clerk, the person shall first appeal to the circuit court in*

120 which the case is pending.

121 If the appeal of an initial bail decision is taken on any charge originally pending in a district court  
122 after that charge has been appealed, certified, or transferred to a circuit court, the person shall first  
123 appeal to the circuit court in which the case is pending.

124 Any bail decision made by a judge of a court may be appealed successively by the person to the  
125 next higher court, up to and including the Supreme Court of Virginia, where permitted by law.

126 The bail decision of the higher court on such appeal, unless the higher court orders otherwise, shall  
127 be remanded to the court in which the case is pending for enforcement and modification. The court in  
128 which the case is pending shall not modify the bail decision of the higher court, except upon a change  
129 in the circumstances subsequent to the decision of the higher court.

130 B. The attorney for the Commonwealth may appeal a bail, bond, or recognizance decision to the  
131 same court to which the accused person is required to appeal under subsection A.

132 C. ~~The~~ *In a matter not governed by subsection C or D of § 19.2-120 or § 19.2-120.2, the court*  
133 *granting or denying such bail may, upon appeal thereof, and for good cause shown, stay execution of*  
134 *such order for so long as reasonably practicable for the party to obtain an expedited hearing before the*  
135 *next higher court. When a district court grants bail over the presumption against bail in a matter that is*  
136 *governed by subsection C or D of § 19.2-120 or § 19.2-120.2, and upon notice by the Commonwealth*  
137 *of its appeal of the court's decision, the court shall stay execution of such order for so long as*  
138 *reasonably practical for the Commonwealth to obtain an expedited hearing before the circuit court, but*  
139 *in no event more than five days, unless the defendant requests a hearing date outside the five-day limit.*

140 No such stay under this subsection may be granted after any person who has been granted bail has  
141 been released from custody on such bail.

142 D. No filing or service fees shall be assessed or collected for any appeal taken pursuant to this  
143 section.