

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 19.2-120 and 19.2-123 of the Code of Virginia, relating to release of accused on secured or unsecured bond.

[H 1873]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-120 and 19.2-123 of the Code of Virginia are amended and reenacted 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.

C. In making a determination under subsection B, 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; (ix) *the person's current bond status for an unrelated arrest in any jurisdiction; and (x) the person's current status on probation or parole.*

D. A judicial officer who admits a person to bail who is charged with an act of violence as defined in § 19.2-297.1 shall notify the attorney for the Commonwealth for the jurisdiction in which such person's case is filed contemporaneously with such person's grant of bail or release. Notice to the attorney for the Commonwealth may be made by facsimile or other electronic means.

E. 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.

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

§ 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~~ 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 specified period of time;

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

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57 solvency shall be found if the value of the proposed surety's equity in the real estate or personal property
58 equals or exceeds the amount of the bond;

59 3a. Require that the person do any or all of the following: (i) maintain employment or, if unemployed,
60 actively seek employment; (ii) maintain or commence an educational program; (iii) avoid all contact with an
61 alleged victim of the crime and with any potential witness who may testify concerning the offense; (iv)
62 comply with a specified curfew; (v) refrain from possessing a firearm, destructive device, or other dangerous
63 weapon; (vi) refrain from excessive use of alcohol, or use of any illegal drug or any controlled substance not
64 prescribed by a health care provider; and (vii) submit to testing for drugs and alcohol until the final
65 disposition of his case;

66 3b. Place a prohibition on a person who holds an elected constitutional office and who is accused of a
67 felony arising from the performance of his duties from physically returning to his constitutional office;

68 3c. Require the accused to accompany the arresting officer to the jurisdiction's fingerprinting facility and
69 submit to having his photograph and fingerprints taken prior to release; or

70 4. Impose any other condition deemed reasonably necessary to assure appearance as required, and to
71 assure his good behavior pending trial, including a condition requiring that the person return to custody after
72 specified hours or be placed on home electronic incarceration pursuant to § 53.1-131.2 or, when the person is
73 required to execute a secured bond, be subject to monitoring by a GPS (Global Positioning System) tracking
74 device, or other similar device. The defendant may be ordered by the court to pay the cost of the device.

75 Upon satisfaction of the terms of recognizance, the accused shall be released forthwith.

76 In addition, where the accused is an individual receiving services in a state training center for individuals
77 with intellectual disability, the judicial officer may place the individual in the custody of the director of the
78 training center, if the director agrees to accept custody. The director is hereby authorized to take custody of
79 the individual and to maintain him at the training center prior to a trial or hearing under such circumstances as
80 will reasonably assure the appearance of the accused for the trial or hearing.

81 B. In any jurisdiction served by a pretrial services agency which offers a drug or alcohol screening or
82 testing program approved for the purposes of this subsection by the chief general district court judge, any
83 such person charged with a crime may be requested by such agency to give voluntarily a urine sample, submit
84 to a drug or alcohol screening, or take a breath test for presence of alcohol. A sample may be analyzed for the
85 presence of phencyclidine (PCP), barbiturates, cocaine, opiates or such other drugs as the agency may deem
86 appropriate prior to any hearing to establish bail. The judicial officer and agency shall inform the accused or
87 juvenile being screened or tested that test results shall be used by a judicial officer only at a bail hearing and
88 only to determine appropriate conditions of release or to reconsider the conditions of bail at a subsequent
89 hearing. All screening or test results, and any pretrial investigation report containing the screening or test
90 results, shall be confidential with access thereto limited to judicial officers, the attorney for the
91 Commonwealth, defense counsel, other pretrial service agencies, any criminal justice agency as defined in §
92 9.1-101 and, in cases where a juvenile is screened or tested, the parents or legal guardian or custodian of such
93 juvenile. However, in no event shall the judicial officer have access to any screening or test result prior to
94 making a bail release determination or to determining the amount of bond, if any. Following this
95 determination, the judicial officer shall consider the screening or test results and the screening or testing
96 agency's report and accompanying recommendations, if any, in setting appropriate conditions of release. In
97 no event shall a decision regarding a release determination be subject to reversal on the sole basis of such
98 screening or test results. Any accused or juvenile whose urine sample has tested positive for such drugs and
99 who is admitted to bail may, as a condition of release, be ordered to refrain from use of alcohol or illegal
100 drugs and may be required to be tested on a periodic basis until final disposition of his case to ensure his
101 compliance with the order. Sanctions for a violation of any condition of release, which violations shall
102 include subsequent positive drug or alcohol test results or failure to report as ordered for testing, may be
103 imposed in the discretion of the judicial officer and may include imposition of more stringent conditions of
104 release, contempt of court proceedings, or revocation of release. Any report of a violation of any pretrial
105 condition of release provided to the court shall be sent by the pretrial services agency to the attorney for the
106 Commonwealth and the counsel of record for the accused or juvenile, or directly to the accused or juvenile if
107 such person is not represented by counsel. Any test given under the provisions of this subsection which yields
108 a positive drug or alcohol test result shall be reconfirmed by a second test if the person tested denies or
109 contests the initial drug or alcohol test positive result. The results of any drug or alcohol test conducted
110 pursuant to this subsection shall not be admissible in any judicial proceeding other than for the imposition of
111 sanctions for a violation of a condition of release.

112 C. [Repealed.]

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

117 E. Nothing in this section shall be construed to prevent a court from imposing a recognizance or bond
118 designed to secure a spousal or child support obligation pursuant to § 16.1-278.16, Chapter 5 (§ 20-61 et seq.)

119 of Title 20, or § 20-114 in addition to any recognizance or bond imposed pursuant to this chapter.

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