

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

4 [H 357]

5 Approved

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

7 **1. That §§ 19.2-120 and 19.2-123 of the Code of Virginia are amended and reenacted as follows:**  
 8 **§ 19.2-120. Admission to bail.**

9 A. Prior to conducting any hearing on the issue of bail, release, or detention, the judicial officer shall, to  
 10 the extent feasible, obtain the person's criminal history.

11 B. A person who is held in custody pending trial or hearing for an offense, civil or criminal contempt, or  
 12 otherwise shall be admitted to bail by a judicial officer, unless there is probable cause to believe that:

13 1. He will not appear for trial or hearing or at such other time and place as may be directed; or

14 2. His liberty will constitute an unreasonable danger to himself, family or household members as defined  
 15 in § 16.1-228, or the public.

16 C. In making a determination under subsection B, the judicial officer shall consider all relevant  
 17 information, including (i) the nature and circumstances of the offense; (ii) whether a firearm is alleged to  
 18 have been used in the commission of the offense; (iii) the weight of the evidence; (iv) the history of the  
 19 accused or juvenile, including his family ties or involvement in employment, education, or medical, mental  
 20 health, or substance abuse treatment; (v) his length of residence in, or other ties to, the community; (vi) his  
 21 record of convictions; (vii) his appearance at court proceedings or flight to avoid prosecution or convictions  
 22 for failure to appear at court proceedings; (viii) whether the person is likely to obstruct or attempt to obstruct  
 23 justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness,  
 24 juror, victim, or family or household member as defined in § 16.1-228; ~~and~~ (ix) any evidence the person  
 25 provided indicating that such person (a) is currently pregnant, (b) has recently given birth, or (c) is currently  
 26 nursing a child; *(x) the person's current bond status for an unrelated arrest in any jurisdiction; and (xi)*  
 27 *whether the person is on probation or parole.*

28 D. A judicial officer who admits a person to bail who is charged with an act of violence as defined in  
 29 § 19.2-297.1 shall notify the attorney for the Commonwealth for the jurisdiction in which such person's case  
 30 is filed contemporaneously with such person's grant of bail or release. Notice to the attorney for the  
 31 Commonwealth may be made by facsimile or other electronic means.

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

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

41 **§ 19.2-123. Release of accused on secured or unsecured bond or promise to appear; conditions of**  
 42 **release.**

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

49 1. Place the person in the custody and supervision of a designated person, organization or pretrial services  
 50 agency which, for the purposes of this section, shall not include a court services unit established pursuant to  
 51 § 16.1-233;

52 2. Place restrictions on the travel, association or place of abode of the person during the period of release  
 53 and restrict contacts with household members for a specified period of time;

54 2a. Require the execution of an unsecured bond;

55 3. Require the execution of a secure bond which at the option of the accused shall be satisfied with  
 56 sufficient solvent sureties, or the deposit of cash in lieu thereof. Only the actual value of any interest in real

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

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

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

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

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

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

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

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

113 C. [Repealed.]

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

118 E. Nothing in this section shall be construed to prevent a court from imposing a recognizance or bond

**119** designed to secure a spousal or child support obligation pursuant to § 16.1-278.16, Chapter 5 (§ 20-61 et seq.)  
**120** of Title 20, or § 20-114 in addition to any recognizance or bond imposed pursuant to this chapter.

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