

HOUSE BILL NO. 240
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee for Courts of Justice
on _____)
(Patron Prior to Substitute—Delegate Gardner)

A BILL to amend and reenact §§ 19.2-120 and 19.2-121 of the Code of Virginia, relating to admission to bail; fixing terms of bail; mental health considerations.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-120 and 19.2-121 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,~~ attempt to obtain and review the person's criminal history and any emergency custody or temporary detention order or involuntary admission issued pursuant to Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 that is provided to the judicial officer. Any law-enforcement officer bringing the accused before a judicial officer who has knowledge that the person is currently, or has been in the recent past, the subject of any such order or admission shall provide such information to the judicial officer.

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, including any emergency custody or temporary detention order or involuntary admission issued pursuant to Chapter 8 (§ 37.2-800 et seq.) of Title 37.2, 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; (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; and (ix) any evidence the person provided indicating that such person (a) is currently pregnant, (b) has recently given birth, or (c) is currently nursing a child.

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.

§ 19.2-121. Fixing terms of bail.

A. If the person is admitted to bail, the terms thereof shall be such as, in the judgment of any official granting or reconsidering the same, will be reasonably fixed to ensure the appearance of the accused and to ensure his good behavior pending trial. The judicial officer shall take into account (i) the nature and circumstances of the offense; (ii) whether a firearm is alleged to have been used in the offense; (iii) the weight of the evidence; (iv) the financial resources of the accused or juvenile and his ability to pay bond; (v) the character of the accused or juvenile including his family ties, employment or involvement in education; (vi) his length of residence in the community; (vii) his record of convictions; (viii) his appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings; (ix) 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, ~~or~~ victim, *or family or household member as defined in § 16.1-228; and (x) the history of the accused or juvenile, including medical, mental health, including any emergency custody or temporary detention order or involuntary admission issued pursuant to Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 that is provided to the judicial officer, or substance abuse treatment; (xi) any evidence the person provided indicating that such person (a) is currently pregnant, (b) has recently given birth, or (c) is currently nursing a child; (xii) whether such person will be an unreasonable danger to himself, family or*

63 *household members as defined in § 16.1-228, or the public; and (xiii) any other information available which*
64 *the court considers relevant to the determination of whether the accused or juvenile is unlikely to appear for*
65 *court proceedings.*

66 B. When a magistrate conducts a bail hearing for a person arrested on a warrant or capias for a jailable
67 offense, the magistrate shall describe the information considered under subsection A on a form provided by
68 the Executive Secretary of the Supreme Court and shall transmit the completed form to the circuit court or
69 district court before which the warrant or capias is returnable, and if such jailable offense is an act of violence
70 as defined in § 19.2-297.1, then such magistrate shall transmit within 24 hours a copy of the completed form
71 to the attorney for the Commonwealth for the jurisdiction where the warrant or capias is returnable.
72 Transmission of such copy to the attorney for the Commonwealth may be by facsimile or other electronic
73 means.

74 C. In any case where the accused has appeared and otherwise met the conditions of bail, no bond therefor
75 shall be used to satisfy fines and costs unless agreed to by the person who posted such bond.