

SENATE BILL NO. 1229

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on _____)

(Patron Prior to Substitute--Senator Obenshain)

A BILL to amend and reenact §§ 19.2-120 and 19.2-124 of the Code of Virginia, relating to admission to bail; rebuttable presumptions against bail.

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 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.

~~A.~~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.~~C. In making a determination under subsection ~~A.~~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

26 attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a
27 prospective witness, juror, victim, or family or household member as defined in § 16.1-228.

28 ~~C.~~ D. The judicial officer shall presume, subject to rebuttal, that no condition or combination of
29 conditions will reasonably assure the appearance of the person or the safety of the public if the person is
30 currently charged with:

31 1. Aggravated, first, or second degree murder under Article 1 (§ 18.2-30 et seq.) of Chapter 4 of
32 Title 18.2;

33 2. Robbery under subdivision B 1 or 2 of § 18.2-58 or carjacking under § 18.2-58.1; or

34 3. Rape under § 18.2-61, forcible sodomy under § 18.2-67.1, or object sexual penetration under §
35 18.2-67.2.

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

38 F. The judicial officer shall consider the factors listed in subsection C and such others as it deems
39 appropriate in determining, for the purpose of rebuttal of the presumption against bail described in
40 subsection D, whether there are conditions of release that will reasonably assure the appearance of the
41 person as required and the safety of the public.

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

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

52 **§ 19.2-124. Appeal from bail, bond, or recognizance order.**

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

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

58 If the initial bail decision on a charge brought by direct indictment or presentment or circuit court
59 *capias* is made by a magistrate, clerk, or deputy clerk, the person shall first appeal to the circuit court in
60 which the case is pending.

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

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

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

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

72 C. ~~The~~ In a matter not governed by subsection D of § 19.2-120, the court granting or denying such
73 bail may, upon appeal thereof, and for good cause shown, stay execution of such order for so long as
74 reasonably practicable for the party to obtain an expedited hearing before the next higher court. When a
75 district court grants bail over the presumption against bail in a matter that is governed by subsection D of
76 § 19.2-120 and upon notice by the Commonwealth of its appeal of the court's decision, the court shall stay
77 execution of such order for so long as reasonably practical for the Commonwealth to obtain an expedited
78 hearing before the circuit court, but in no event more than five days, unless the defendant requests a
79 hearing date outside the five-day limit.

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

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

84 #