

HOUSE BILL NO. 1365

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Williams)

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; appeal.

**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.**

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. 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. There shall be a presumption against releasing a person on his own recognizance or an unsecured bond if:

- 1. The person has been convicted of any of the following offenses within the previous five years:
  - a. Any felony offense;
  - b. Any criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; or
  - c. A violation of § 18.2-366 or 18.2-370.6;

26           2. The person is charged with committing the offense while he was on release pending trial for a  
27 prior offense under federal or state law or on release pending imposition or execution of sentence or appeal  
28 of sentence or conviction;

29           3. The person is charged with committing the offense while he was on probation or parole;

30           4. The person is charged with an arson-related or riot-related offense in violation of § 18.2-77,  
31 18.2-79, 18.2-80, 18.2-405, 18.2-408, 18.2-413, or 18.2-414;

32           5. The person is charged with a violation of § 18.2-308.2;

33           6. The person has been convicted of failure to appear within the previous year; or

34           7. The results of a pretrial risk assessment instrument, if available, indicate that such person is not  
35 low risk.

36           C. The presumption described in subsection B may be rebutted if a judicial officer finds, by clear  
37 and convincing evidence, that such person is not a flight risk and his liberty will not constitute an  
38 unreasonable danger to himself, family or household members as defined in § 16.1-228, or the public.

39           D. In making a determination under subsection A or for the purpose of rebuttal of the presumption  
40 described in subsection B, the judicial officer shall consider all relevant information, including (i) the  
41 nature and circumstances of the offense; (ii) whether a firearm is alleged to have been used in the  
42 commission of the offense; (iii) the weight of the evidence; (iv) the history of the accused or juvenile,  
43 including his family ties or involvement in employment, education, or medical, mental health, or substance  
44 abuse treatment; (v) his length of residence in, or other ties to, the community; (vi) his record of  
45 convictions; (vii) his appearance at court proceedings or flight to avoid prosecution or convictions for  
46 failure to appear at court proceedings; and (viii) whether the person is likely to obstruct or attempt to  
47 obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective  
48 witness, juror, victim, or family or household member as defined in § 16.1-228.

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

51           ~~D.~~ F. If the judicial officer sets a secured bond and the person engages the services of a licensed  
52 bail bondsman, the magistrate executing recognizance for the accused shall provide the bondsman, upon

53 request, with a copy of the person's Virginia criminal history record, if readily available, to be used by the  
54 bondsman only to determine appropriate reporting requirements to impose upon the accused upon his  
55 release. The bondsman shall pay a \$15 fee payable to the state treasury to be credited to the Literary Fund,  
56 upon requesting the defendant's Virginia criminal history record issued pursuant to § 19.2-389. The  
57 bondsman shall review the record on the premises and promptly return the record to the magistrate after  
58 reviewing it.

59 **§ 19.2-124. Appeal from bail, bond, or recognizance order.**

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

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

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

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

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

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

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

79 C. ~~The~~ In a matter not governed by subsection B of § 19.2-120, the court granting or denying such  
80 bail may, upon appeal thereof, and for good cause shown, stay execution of such order for so long as  
81 reasonably practicable for the party to obtain an expedited hearing before the next higher court. When a  
82 district court released a person on his own recognizance or an unsecured bond over the presumption in a  
83 matter that is governed by subsection B of § 19.2-120, and upon notice by the Commonwealth of its appeal  
84 of the court's decision, the court shall stay execution of such order for so long as reasonably practical for  
85 the Commonwealth to obtain an expedited hearing before the circuit court, but in no event more than five  
86 days, unless the defendant requests a hearing date outside the five-day limit.

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

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

91 #