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HOUSE BILL NO. 430  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee for Courts of Justice  
on \_\_\_\_\_)  
(Patron Prior to Substitute--Delegate Arnold)

A BILL to amend and reenact § 19.2-123 of the Code of Virginia, relating to bail; violation of conditions of release; report available to attorney for the Commonwealth and counsel of record.

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

**1. That § 19.2-123 of the Code of Virginia is amended and reenacted as follows:**

**§ 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 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

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

29 3a. Require that the person do any or all of the following: (i) maintain employment or, if  
30 unemployed, actively seek employment; (ii) maintain or commence an educational program; (iii) avoid  
31 all contact with an alleged victim of the crime and with any potential witness who may testify concerning  
32 the offense; (iv) comply with a specified curfew; (v) refrain from possessing a firearm, destructive device,  
33 or other dangerous weapon; (vi) refrain from excessive use of alcohol, or use of any illegal drug or any  
34 controlled substance not prescribed by a health care provider; and (vii) submit to testing for drugs and  
35 alcohol until the final disposition of his case;

36 3b. Place a prohibition on a person who holds an elected constitutional office and who is accused  
37 of a felony arising from the performance of his duties from physically returning to his constitutional office;

38 3c. Require the accused to accompany the arresting officer to the jurisdiction's fingerprinting  
39 facility and submit to having his photograph and fingerprints taken prior to release; or

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

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

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

52 B. In any jurisdiction served by a pretrial services agency which offers a drug or alcohol screening  
53 or testing program approved for the purposes of this subsection by the chief general district court judge,

54 any such person charged with a crime may be requested by such agency to give voluntarily a urine sample,  
55 submit to a drug or alcohol screening, or take a breath test for presence of alcohol. A sample may be  
56 analyzed for the presence of phencyclidine (PCP), barbiturates, cocaine, opiates or such other drugs as the  
57 agency may deem appropriate prior to any hearing to establish bail. The judicial officer and agency shall  
58 inform the accused or juvenile being screened or tested that test results shall be used by a judicial officer  
59 only at a bail hearing and only to determine appropriate conditions of release or to reconsider the  
60 conditions of bail at a subsequent hearing. All screening or test results, and any pretrial investigation report  
61 containing the screening or test results, shall be confidential with access thereto limited to judicial officers,  
62 the attorney for the Commonwealth, defense counsel, other pretrial service agencies, any criminal justice  
63 agency as defined in § 9.1-101 and, in cases where a juvenile is screened or tested, the parents or legal  
64 guardian or custodian of such juvenile. However, in no event shall the judicial officer have access to any  
65 screening or test result prior to making a bail release determination or to determining the amount of bond,  
66 if any. Following this determination, the judicial officer shall consider the screening or test results and the  
67 screening or testing agency's report and accompanying recommendations, if any, in setting appropriate  
68 conditions of release. In no event shall a decision regarding a release determination be subject to reversal  
69 on the sole basis of such screening or test results. Any accused or juvenile whose urine sample has tested  
70 positive for such drugs and who is admitted to bail may, as a condition of release, be ordered to refrain  
71 from use of alcohol or illegal drugs and may be required to be tested on a periodic basis until final  
72 disposition of his case to ensure his compliance with the order. Sanctions for a violation of any condition  
73 of release, which violations shall include subsequent positive drug or alcohol test results or failure to report  
74 as ordered for testing, may be imposed in the discretion of the judicial officer and may include imposition  
75 of more stringent conditions of release, contempt of court proceedings, or revocation of release. Any report  
76 of such violation provided to the court shall be sent by the pretrial services agency to the attorney for the  
77 Commonwealth and the counsel of record for the accused or juvenile, or directly to the accused or juvenile  
78 if such person is not represented by counsel. Any test given under the provisions of this subsection which  
79 yields a positive drug or alcohol test result shall be reconfirmed by a second test if the person tested denies  
80 or contests the initial drug or alcohol test positive result. The results of any drug or alcohol test conducted

81 pursuant to this subsection shall not be admissible in any judicial proceeding other than for the imposition  
82 of sanctions for a violation of a condition of release.

83 C. [Repealed.]

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

88 E. Nothing in this section shall be construed to prevent a court from imposing a recognizance or  
89 bond designed to secure a spousal or child support obligation pursuant to § 16.1-278.16, Chapter 5 (§ 20-  
90 61 et seq.) of Title 20, or § 20-114 in addition to any recognizance or bond imposed pursuant to this  
91 chapter.

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