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HOUSE BILL NO. 369

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact § 19.2-158 of the Code of Virginia, relating to court appearance of a person not free on bail.

Patrons—Williams Graves, Scott, D.L., Hayes, Hope, Jenkins, Maldonado, McQuinn, Rasoul, Shin and Simonds

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-158 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-158. When person not free on bail shall be informed of right to counsel and amount of bail.

A. As used in this section, "bail information" means (i) the magistrate's bail determination checklist prepared pursuant to subsection B of § 19.2-121 and (ii) any risk assessment instrument or interview results prepared pursuant to § 19.2-152.4:3.

B. Every person charged with an offense described in § 19.2-157, who is not free on bail or otherwise, shall be brought before the judge of a court not of record, unless the circuit court issues process commanding the presence of the person, in which case the person shall be brought before the circuit court, on the first day on which such court sits after the person is charged, at which time the judge shall inform the accused of the amount of his bail and his right to counsel detained. If the court not of record sits on a day prior to the scheduled sitting of the court which that issued process, the person shall be brought before the court not of record. The judges of any judicial circuit, including the judges of the districts contained in that circuit, may designate a judge of any court to conduct hearings pursuant to this section for any person detained and required to appear before any court in that circuit.

C. Counsel shall be made available to the accused for any proceeding held pursuant to this section. The accused may retain his own counsel and such counsel is permitted to make an appearance on behalf of the accused. If the accused has not retained counsel, the court shall appoint counsel to represent such accused during the proceedings held pursuant to this section. Such appointment shall be made irrespective of the accused's financial resources and may be limited to the purposes of representing the accused at a proceeding held pursuant to this section. All counsel shall be given access to the accused and to bail information a reasonable time prior to the start of any proceeding.

D. For a hearing conducted pursuant to this section:

1. The court shall ensure that the accused is represented by counsel and may appoint counsel for the accused;

2. The court shall advise the accused of (i) the nature of the charge or charges against him, (ii) his current bail, and (iii) his right to counsel;

3. Counsel for the accused shall be provided with adequate time and space in which counsel can confidentially consult with the accused; and

4. The court shall also hear and consider motions by the person or Commonwealth relating to bail or conditions of release pursuant to Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title. Absent good cause shown, a hearing on bail or conditions of release shall be held as soon as practicable but in no event later than three calendar days, excluding Saturdays, Sundays, and legal holidays, following the making of such motion.

No hearing on the charges against the accused shall be had until the foregoing conditions have been complied with, and the accused shall be allowed a reasonable opportunity to employ counsel of his own choice, or, if appropriate, the statement of indigence provided for in § 19.2-159 may be executed.

The attorney for the Commonwealth may participate in any proceeding conducted pursuant to this section.

E. After a hearing conducted pursuant to subsection B, unless such matter has been appealed pursuant to § 19.2-124, if either party learns of new information material to the issue of bail or conditions of release that was not previously presented to the court, the party may move such court to set or amend bail or the conditions of release. Such matters shall be heard as soon as practicable, but no more than three calendar days after the motion is filed.

F. The chief judge in each circuit shall create a plan, in writing, that establishes the means by which the jurisdiction will meet the provisions described in this section. The plan shall be completed by October 1, 2022, or at least 90 days before any change to an existing plan. In developing the plan, the

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58 chief judge shall create a committee that may include an attorney for the Commonwealth or his
59 designee, a member of the defense bar, a magistrate from the judicial circuit, and a representative from
60 (i) a local pretrial services agency; (ii) an adult detention center; (iii) a juvenile detention center; (iv) a
61 circuit court clerk's office; (v) a general district court clerk's office; (vi) a juvenile and domestic
62 relations district court clerk's office that is located within the judicial circuit; (vii) a judge from a
63 circuit court, general district court, and juvenile and domestic relations district court located within the
64 judicial circuit; and (viii) any other person the chief judge deems proper to include.

65 Such plan shall include (a) the method of selecting qualified attorneys to provide representation at
66 the proceedings conducted pursuant to this section, including whether such representation will be
67 provided by a public defender or private appointed counsel, or a combination thereof; (b) the manner in
68 which the court will provide the counsel for the accused with adequate and confidential time and space
69 to meet and prepare for the proceeding; (c) the time and place of proceedings to be conducted under
70 this section; (d) a process to ensure that if an excessive number of proceedings should arise that such
71 proceedings may be handled in a prompt manner; (e) a protocol to ensure that the public defender and
72 other counsel for the accused receives adequate notice of the names of the persons appearing on the
73 docket, access to those persons, and bail information; and (f) a protocol to ensure payment to an
74 attorney appointed for the accused who is not a public defender.

75 The court is authorized to make payments to an appointed attorney at the same rate and from the
76 same funds as for court-appointed misdemeanor representation in accordance with § 19.2-163. The court
77 may also approve a waiver to the limits placed on such compensation if warranted.

78 All plans created in accordance with this subsection shall be made available to the public. A copy of
79 such plan and any subsequent revisions shall also be sent to the Executive Director of the Virginia
80 Indigent Defense Commission.

81 G. Failure to comply with this section is appealable to the next highest court. If a violation is found,
82 the court hearing such appeal may impose such relief as deemed appropriate, including modification of
83 conditions of release or immediate release without conditions.

84 **2. That the provisions of this act shall become effective on January 1, 2023, except the provisions**
85 **of subsection F of § 19.2-158 of the Code of Virginia, as amended by this act, which shall become**
86 **effective in due course.**