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HOUSE BILL NO. 291

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 27, 2010)

(Patron Prior to Substitute—Delegate Griffith)

A BILL to amend and reenact §§ 19.2-124 and 19.2-132 of the Code of Virginia, relating to appeals from bail, bond, and recognizance determinations.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-124 and 19.2-132 of the Code of Virginia are amended and reenacted as follows:

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

A. If a judicial officer denies bail to a person, requires excessive bond, or fixes unreasonable terms of a recognizance under this article, the person may appeal therefrom successively to the next higher court or judge thereof, up to and including the Supreme Court of Virginia or any justice thereof where permitted by law the decision of the judicial officer.

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

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

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

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

B. If a court grants bail to a person or fixes a term of recognizance under this article over the objection of the attorney for the Commonwealth, the attorney for the Commonwealth may appeal therefrom successively a bail, bond or recognizance decision to the next higher same court or judge thereof, up to and including the Supreme Court of Virginia or any justice thereof to which the accused person is required to appeal under subsection A.

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

§ 19.2-132. Motion to increase amount of bond fixed by judicial officer; when bond may be increased.

~~A. Although a person has been admitted to bail, if~~ If the amount of any bond fixed by a judicial officer is subsequently deemed insufficient, or the security taken inadequate, or if it appears that bail should have been denied or that the person has violated a term or condition of his release, or has been convicted of or arrested for a felony or misdemeanor, the attorney for the Commonwealth of the county or city in which the person is held for trial may, on reasonable notice to the person and, if such person has been admitted to bail, to any surety on the bond of such person, move the court, or the appropriate judicial officer to increase the amount of such bond or to revoke bail. The court may, in accordance with subsection B, grant such motion and may require new or additional sureties therefor, or both or revoke bail. Any surety in a bond for the appearance of such person may take from his principal collateral or other security to indemnify such surety against liability. The failure to notify the surety will not prohibit the court from proceeding with the bond hearing.

B. Subsequent to an initial appearance before any judicial officer where the conditions of bail have been determined, no person, after having been released on a bond, shall be subject to a motion to increase such bond or revoke bail unless (i) the person has violated a term or condition of his release, or is convicted of or arrested for a felony or misdemeanor, or (ii) the attorney for the Commonwealth presents evidence that incorrect or incomplete information regarding the person's family ties; employment; financial resources; length of residence in the community; record of convictions; record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings; 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 other information relevant to the bond determination was relied upon by the court or magistrate establishing initial bond.