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## HOUSE BILL NO. 2074

Offered January 10, 2001

Prefiled January 10, 2001

A BILL to amend and reenact §§ 18.2-253 and 19.2-386.12 of the Code of Virginia, relating to sale of property forfeited in drug cases.

Patrons—Landes, Harris, Kilgore and Weatherholtz; Senator: Hanger

Referred to Committee for Courts of Justice

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

**1. That §§ 18.2-253 and 19.2-386.12 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-253. Disposal of seized substances.

A. All controlled substances, imitation controlled substances, marijuana or paraphernalia the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer or have been seized in connection with violations of this chapter, shall be forfeited and disposed of as follows:

1. Upon written application by the Division of Forensic Science the court may order the forfeiture of any such substance or paraphernalia to the Division for research and training purposes and for destruction pursuant to regulations of the United States Department of Justice Drug Enforcement Administration and of the Board of Pharmacy once these purposes have been fulfilled.

2. In the event no application is made under subdivision 1 of this subsection, the court shall order the destruction of all such substances or paraphernalia which order shall state the existence and nature of the substance or paraphernalia, the quantity thereof, the location where seized, the person or persons from whom the substance or paraphernalia was seized, if known, and the manner whereby such item shall be destroyed. *However, the court may order that paraphernalia identified in subsection 5 of § 18.2-265.1 not be destroyed if a request for its purchase has been made by a qualifying entity pursuant to subsection A of § 19.2-386.12.* A return under oath, reporting the time, place and manner of destruction shall be made to the court and to the Board of Pharmacy by the officer to whom the order is directed. A copy of the order and affidavit shall be made a part of the record of any criminal prosecution in which the substance or paraphernalia was used as evidence and shall, thereafter, be prima facie evidence of its contents. In the event a law enforcement agency recovers, seizes, finds, is given or otherwise comes into possession of any such substances or paraphernalia which are not evidence in a trial in the Commonwealth, the chief law-enforcement officer of the agency may, with the written consent of the appropriate attorney for the Commonwealth, order destruction of same; provided that, a statement under oath, reporting a description of the substances and paraphernalia destroyed, and the time, place and manner of destruction is made to the chief law-enforcement officer and to the Board of Pharmacy by the officer to whom the order is directed.

B. No such substance or paraphernalia used or to be used in a criminal prosecution under this chapter shall be disposed of as provided by this section until all rights of appeal have been exhausted, except as provided in § 18.2-253.1.

§ 19.2-386.12. Sale of forfeited property.

A. Any sale of forfeited property shall be made for cash, after due advertisement. The sale shall be by public sale or other commercially feasible means authorized by the court in the order of forfeiture and shall vest in the purchaser a clear and absolute title to the property sold subject to the rights of any lien holder whose interest is not forfeited. *If there is no objection made by any of the eligible participating agencies described in § 19.2-386.14, the court may authorize a sale of property for less than market value, or for a nominal fee, to an organization granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code that makes a showing to the court of sufficient need for the property and an ability to put the property to a lawful and beneficial use.* The proceeds of sale, and whatever may be realized on any bond given under § 19.2-386.6, and any money forfeited shall be paid over to the state treasury into a special fund of the Department of Criminal Justice Services in accordance with § 19.2-386.14.

B. In all cases of forfeiture under this section, the actual expenses incident to the custody, preservation, and management of the seized property prior to forfeiture, the actual expenses incident to normal legal proceedings to perfect the Commonwealth's interest in the seized property through forfeiture, and the actual expenses incident to the sale thereof, including commissions, shall be taxed as costs and shall be paid to the person or persons who incurred these costs out of the net proceeds from the sale of such property. If there are no proceeds, the actual expenses shall be paid by the

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59 Commonwealth from the Criminal Fund. Actual expenses in excess of the available net proceeds shall  
60 be paid by the Commonwealth from the Criminal Fund. The party or parties in interest to any forfeiture  
61 proceeding commenced under this section shall be entitled to reasonable attorney's fees and costs if the  
62 forfeiture proceeding is terminated in favor of such party or parties. Such fees and costs shall be paid by  
63 the Commonwealth from the Criminal Fund.  
64 The residue, if any, shall be paid and disbursed as provided in subsection A of § 19.2-386.10 and  
65 § 19.2-386.14 and regulations promulgated by the Criminal Justice Services Board.