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HOUSE BILL NO. 2802

Offered January 19, 2001

A BILL to amend and reenact § 19.2-270.4 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-270.7, relating to retention of evidence.

Patrons—Armstrong and Almand

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-270.4 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-270.7 as follows:

§ 19.2-270.4. When donation, destruction or return of exhibits received in evidence authorized.

A. Unless objection with sufficient cause is made, the trial court in any criminal case may order the donation or destruction of any or all exhibits received in evidence during the course of the trial (i) at any time after the expiration of the time for filing an appeal from the final judgment of the court if no appeal is taken or (ii) if an appeal is taken, at any time after exhaustion of all appellate remedies. The order of donation or destruction may require that photographs be made of all exhibits ordered to be donated or destroyed and that such photographs be appropriately labeled for future identification. In addition, the order shall state the nature of the exhibit subject to donation or destruction, identify the case in which such exhibit was received and from whom such exhibit was received, if known, and the manner by which the exhibit is to be destroyed or to whom donated.

B. A circuit court for good cause shown, on notice to the attorney for the Commonwealth and any attorney for a defendant in the case, may order the return of any or all exhibits to the owners thereof, notwithstanding the pendency of any appeal. The order may be upon such conditions as the court deems appropriate for future identification and inclusion in the record of a case subject to retrial. In addition, the owner shall acknowledge in a sworn affidavit to be filed with the record of the case, that he has retaken possession of such exhibit or exhibits.

C. Any photographs taken pursuant to an order of donation or destruction or an order returning exhibits to the owners shall be retained with the record in the case and, if necessary, shall be admissible in any subsequent trial of the same cause, subject to all other rules of evidence.

D. Upon petition of any organization which is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, the court in its sound discretion may order the donation of an exhibit to such charitable organization.

E. The provisions of this section shall be subject to the provisions of § 19.2-270.7.

§ 19.2-270.7. Preservation of certain evidence.

A. Whenever any person is convicted of a felony, any item admitted into evidence in any of the proceedings leading to the conviction that may practicably be retained by the clerk, including without limitation, evidence that has been, or could have been, subjected to forensic, scientific or laboratory testing, such as fingerprinting, chemical analysis, blood or DNA analysis, or other testing to produce relevant evidence, shall, notwithstanding any other provision of law, be retained by the court as part of the record in the case until such time as the person's sentence has been completed or the conviction has been finally set aside on appeal or by pardon or otherwise.

B. Whenever any person is convicted of a felony, all records relating to the investigation of that crime by personnel of any law-enforcement agency, including but not limited to officer's notes, documents, tapes, computer or electronic records, or other records, shall be retained by the law-enforcement agency as part of that person's case record until such time as the person's sentence has been completed or the conviction has been finally set aside on appeal or by pardon or otherwise.

INTRODUCED

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