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HOUSE BILL NO. 2802

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Stolle
on February 21, 2001)

(Patron Prior to Substitute—Delegate Armstrong)

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 19.2-270.4:1 relating to forensic evidence retention.*

Be it enacted by the General Assembly of Virginia:

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 19.2-270.4:1, as follows:

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

A. *Except as provided in § 19.2-270.4:1 and 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. *Except as provided in § 19.2-270.4:1*, 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.

§ 19.2-270.4:1. *Storage, preservation and retention of human biological evidence in felony cases.*

A. *Notwithstanding any provision of law or rule of court, upon motion of a person convicted of a felony but not sentenced to death or his attorney of record to the circuit court that entered the judgment for the offense, the court shall order the storage, preservation, and retention of any human biological evidence or representative samples collected or obtained in the case for a period of up to fifteen years from the time of conviction, unless the court determines, in its discretion, that the evidence should be retained for a longer period of time. Upon the filing of such a motion, the defendant may request a hearing for the limited purpose of identifying the human biological evidence or representative samples that are to be stored in accordance with the provisions of this section. Upon the granting of the motion, the court shall order the clerk of the circuit court to transfer all such evidence to the Division of Forensic Science. The Division of Forensic Science shall store, preserve and retain such evidence. If the evidence is not within the custody of the clerk at the time the order is entered, the court shall order the governmental entity having custody of the evidence to transfer such evidence to the Division of Forensic Science. Upon the entry of an order under this subsection, the court may upon motion or upon good cause shown, with notice to the convicted person, his attorney of record and the attorney for the Commonwealth, modify the original storage order, as it relates to time of storage of the evidence or samples, for a period of time greater than or less than that specified in the original order.*

B. *In the case of a person sentenced to death, the court that entered the judgment shall, in all cases, order any human biological evidence or representative samples to be transferred by the governmental entity having custody to the Division of Forensic Science. The Division of Forensic Science shall store, preserve, and retain such evidence until the judgment is executed. If the person sentenced to death has his sentence reduced, then such evidence shall be transferred from the Division to the original investigating law enforcement agency for storage as provided in this section.*

C. *Pursuant to standards and guidelines established by the Division of Forensic Science, the order shall state the method of custody, transfer and return of any evidence to insure and protect the Commonwealth's interest in the integrity of the evidence. Pursuant to standards and guidelines*

60 established by the Division of Forensic Science, the Division of Forensic Science, local law enforcement
61 agency or other custodian of the evidence shall take all necessary steps to preserve, store, and retain
62 the evidence and its chain of custody for the period of time specified.

63 D. In any proceeding under this section, the court, upon a finding that the physical evidence is of
64 such a nature, size or quantity that storage, preservation or retention of all of the evidence is
65 impractical, may order the storage of only representative samples of the evidence. The Division of
66 Forensic Science shall take representative samples, cuttings or swabbings and retain them. The
67 remaining evidence shall be handled according to § 19.2-270.4 or as otherwise provided for in the
68 Code.

69 E. An action under this section or the performance of any attorney representing the petitioner under
70 this section shall not form the basis for relief in any habeas corpus or appellate proceeding. Nothing in
71 this section shall create any cause of action for damages against the Commonwealth, or any of its
72 political subdivisions or officers, employees or agents of the Commonwealth or its political subdivisions.