

# VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

## CHAPTER 611

*An Act to amend and reenact § 19.2-398 of the Code of Virginia, relating to appeal by Commonwealth in felony actions.*

[S 291]

Approved April 6, 2002

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

**1. That § 19.2-398 of the Code of Virginia is amended and reenacted as follows:**

§ 19.2-398. When appeal by the Commonwealth in felony actions allowed.

A. A petition for appeal from a circuit court may be taken by the Commonwealth only in felony cases, before a jury is impaneled and sworn in a jury trial, or before the court begins to hear or receive evidence or the first witness is sworn, whichever occurs first, in a nonjury trial. The appeal may be taken from:

1. An order of a circuit court dismissing a warrant, information or indictment, or any count or charge thereof on the ground that a statute upon which it was based is unconstitutional; or

2. An order of a circuit court prohibiting the use of certain evidence at trial on the grounds such evidence was obtained in violation of the provisions of the Fourth, Fifth or Sixth Amendments to the Constitution of the United States or Article I, Section 8, 10 or 11 of the Constitution of Virginia prohibiting illegal searches and seizures and protecting rights against self-incrimination, provided the Commonwealth certifies ~~the evidence is essential to the prosecution~~ *that the appeal is not taken for purpose of delay and that the evidence is substantial proof of a fact material in the proceeding.*

B. A petition for appeal may be taken by the Commonwealth in a felony case from any order of release on conditions pursuant to Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title.

C. *A petition for appeal may be taken by the Commonwealth in a felony case after conviction where the sentence imposed by the circuit court is contrary to mandatory sentencing or restitution terms required by statute.*

D. Nothing in this chapter shall affect the Commonwealth's right to appeal in civil matters or cases involving a violation of law relating to the state revenue or appeals pursuant to § 17.1-411 or subsection C of § 19.2-317.