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HOUSE BILL NO. 785

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 19.2-243 and 19.2-298 of the Code of Virginia, relating to speedy trial and speedy sentencing.

 Patron—Hurt

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 19.2-243 and 19.2-298 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-243. Limitation on prosecution of felony due to lapse of time after finding of probable cause; misdemeanors; exceptions.

Where a general district court has found that there is probable cause to believe that the accused has committed a felony, the accused, if he is held continuously in custody thereafter, shall be forever discharged from prosecution for such offense if no trial is commenced in the circuit court within five months from the date such probable cause was found by the district court; and if the accused is not held in custody but has been recognized for his appearance in the circuit court to answer for such offense, he shall be forever discharged from prosecution therefor if no trial is commenced in the circuit court within ~~nine~~ six months from the date such probable cause was found.

If there was no preliminary hearing in the district court, or if such preliminary hearing was waived by the accused, the commencement of the running of the five and ~~nine~~ six months periods, respectively, set forth in this section, shall be from the date an indictment or presentment is found against the accused.

If an indictment or presentment is found against the accused but he has not been arrested for the offense charged therein, the five and ~~nine~~ six months periods, respectively, shall commence to run from the date of his arrest thereon.

Where a case is before a circuit court on appeal from a conviction of a misdemeanor or traffic infraction in a district court, the accused shall be forever discharged from prosecution for such offense if the trial de novo in the circuit court is not commenced (i) within five months from the date of the conviction if the accused has been held continuously in custody or (ii) within ~~nine~~ six months of the date of the conviction if the accused has been recognized for his appearance in the circuit court.

The provisions of this section shall not apply to such period of time as the failure to try the accused was caused:

1. By his insanity or by reason of his confinement in a hospital for care and observation;
2. By the witnesses for the Commonwealth being enticed or kept away, or prevented from attending by sickness or accident;
3. By the granting of a separate trial at the request of a person indicted jointly with others for a felony;
4. By continuance granted on the motion of the accused or his counsel, or by concurrence of the accused or his counsel in such a motion by the attorney for the Commonwealth, or by the failure of the accused or his counsel to make a timely objection to such a motion by the attorney for the Commonwealth, or by reason of his escaping from jail or failing to appear according to his recognizance; or

5. By the inability of the jury to agree in their verdict.

But the time during the pendency of any appeal in any appellate court shall not be included as applying to the provisions of this section.

For the purposes of this section, a trial is deemed commenced at the point when jeopardy would attach or when a plea of guilty or nolo contendere is tendered by the defendant.

§ 19.2-298. Pronouncement of sentence.

After a finding of guilty, sentence shall be pronounced, or decision to suspend the imposition of sentence shall be announced, without unreasonable delay *but in no case more than six months following the finding of guilt*. Pending pronouncement, the court may commit the accused to jail or may continue or alter the bail except that in those cases where the accused is convicted of a murder in the first degree, the court shall commit him to jail and he shall not be allowed bail pending the pronouncement of sentence. Before pronouncing the sentence, the court shall inquire of the accused if he desires to make a statement and if he desires to advance any reason why judgment should not be pronounced against him.