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SENATE BILL NO. 1177

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 21, 2005)

(Patrons Prior to Substitute—Senator Obenshain)

A BILL to amend and reenact §§ 19.2-243, 19.2-266.2 and 19.2-398 of the Code of Virginia, relating to defense pretrial motions and appeals by the Commonwealth.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-243, 19.2-266.2 and 19.2-398 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 *for such offense*, 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 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 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 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 months of the date of the conviction if the accused has been recognized for his appearance in the circuit court *to answer for such offense*.

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.

6. *By a natural disaster, civil disorder, or act of God.*
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, *an arrest on an indictment or warrant or information or presentment is deemed to have occurred only when such indictment, warrant, information, or presentment or the summons or capias to answer such process is served or executed upon the accused and 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. The lodging of a detainer or its equivalent shall not constitute an arrest under this section.*

§ 19.2-266.2. Defense objections to be raised before trial; hearing; bill of particulars.

Defense motions or objections seeking (i) suppression of evidence 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 proscribing illegal searches and seizures and protecting rights against self-incrimination; ~~or~~ (ii) *dismissal of a warrant, information, or indictment or any count or charge thereof on the ground that: (a) the defendant would*

60 *be deprived of a speedy trial in violation of the provisions of the Sixth Amendment to the United States*
61 *Constitution, Article I, Section 8 of the Constitution of Virginia, or § 19.2-243; or (b) the defendant*
62 *would be twice placed in jeopardy in violation of the provisions of the Fifth Amendment to the*
63 *Constitution of the United States or Article I, Section 8 of the Constitution of Virginia; or (iii) dismissal*
64 *of a warrant, information, or indictment or any count or charge thereof on the ground that a statute upon*
65 *which it was based is unconstitutional shall be raised by motion or objection, in writing, before trial.*
66 *The motions or objections shall be filed and notice given to opposing counsel not later than seven days*
67 *before trial or, if made under clause (ii), at such time prior to trial as the grounds for the motion or*
68 *objection shall arise, whichever occurs last. A hearing on all such motions or objections shall be held*
69 *not later than three days prior to trial, unless such period is waived by the accused, as set by the trial*
70 *judge. The court may, however, for good cause shown and in the interest of justice, permit the motions*
71 *or objections to be raised at a later time.*

72 To assist the defense in filing such motions or objections in a timely manner, the trial court shall,
73 upon motion of the defendant, direct the Commonwealth to file a bill of particulars pursuant to
74 § 19.2-230. The trial court shall fix the time within which such bill of particulars is to be filed. Upon
75 further motion of the defendant, the trial court may, upon a showing of good cause, direct the
76 Commonwealth to supplement its bill of particulars. The attorney for the Commonwealth shall certify
77 that the matters stated in the bill of particulars are true and accurate to the best of his knowledge and
78 belief.

79 § 19.2-398. When appeal by the Commonwealth allowed.

80 A. In a felony case a pretrial appeal from a circuit court may be taken by the Commonwealth from:

81 1. An order of a circuit court dismissing a warrant, information or indictment, or any count or charge
82 thereof on the ground that (i) *the defendant was deprived of a speedy trial in violation of the provisions*
83 *of the Sixth Amendment to the United States Constitution, Article I, Section 8 of the Constitution of*
84 *Virginia, or § 19.2-243; (ii) the defendant would be twice placed in jeopardy in violation of the*
85 *provisions of the Fifth Amendment to the Constitution of the United States or Article I, Section 8 of the*
86 *Constitution of Virginia; or (iii) a statute upon which it was based is unconstitutional; or*

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

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

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

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

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