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SENATE BILL NO. 1177

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on February 25, 2005)

(Patron Prior to Substitute—Senator Obenshain)

A BILL to amend and reenact §§ 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 §§ 19.2-266.2 and 19.2-398 of the Code of Virginia are amended and reenacted as follows:

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

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

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

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

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