

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 19.2-386.23 of the Code of Virginia, relating to the destruction of*
3 *nonevidentiary substances and paraphernalia.*

4 [H 653]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 19.2-386.23 of the Code of Virginia is amended and reenacted as follows:**

8 § 19.2-386.23. Disposal of seized controlled substances, marijuana and paraphernalia.

9 A. All controlled substances, imitation controlled substances, marijuana or paraphernalia, the lawful
10 possession of which is not established or the title to which cannot be ascertained, which have come into
11 the custody of a peace officer or have been seized in connection with violations of Chapter 7
12 (§ 18.2-247 et seq.) of Title 18.2, shall be forfeited and disposed of as follows:

13 1. Upon written application by the Department of Forensic Science the court may order the forfeiture
14 of any such substance or paraphernalia to the Department for research and training purposes and for
15 destruction pursuant to regulations of the United States Department of Justice Drug Enforcement
16 Administration and of the Board of Pharmacy once these purposes have been fulfilled.

17 2. In the event no application is made under subdivision 1 of this subsection, the court shall order
18 the destruction of all such substances or paraphernalia, which order shall state the existence and nature
19 of the substance or paraphernalia, the quantity thereof, the location where seized, the person or persons
20 from whom the substance or paraphernalia was seized, if known, and the manner whereby such item
21 shall be destroyed. However, the court may order that paraphernalia identified in subdivision 5 of
22 § 18.2-265.1 not be destroyed and that it be given to a person or entity that makes a showing to the
23 court of sufficient need for the property and an ability to put the property to a lawful and publicly
24 beneficial use. A return under oath, reporting the time, place and manner of destruction shall be made to
25 the court and to the Board of Pharmacy by the officer to whom the order is directed. A copy of the
26 order and affidavit shall be made a part of the record of any criminal prosecution in which the substance
27 or paraphernalia was used as evidence and shall, thereafter, be prima facie evidence of its contents. In
28 the event a law-enforcement agency recovers, seizes, finds, is given or otherwise comes into possession
29 of any such substances or paraphernalia that are not evidence in a trial in the Commonwealth, the chief
30 law-enforcement officer of the agency *or his designee* may, with the written consent of the appropriate
31 attorney for the Commonwealth, order destruction of same; provided that, a statement under oath,
32 reporting a description of the substances and paraphernalia destroyed, and the time, place and manner of
33 destruction is made to the chief law-enforcement officer and to the Board of Pharmacy by the officer to
34 whom the order is directed.

35 B. No such substance or paraphernalia used or to be used in a criminal prosecution under Chapter 7
36 (§ 18.2-247 et seq.) of Title 18.2 shall be disposed of as provided by this section until all rights of
37 appeal have been exhausted, except as provided in § 19.2-386.24.

ENROLLED

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