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SENATE BILL NO. 154

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 13, 2006)

(Patron Prior to Substitute—Senator Norment)

A BILL to amend the Code of Virginia by adding sections numbered 19.2-188.3 and 19.2-188.4, relating to certificate of chain of custody for physical evidence.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 19.2-188.3 and 19.2-188.4 as follows:

§ 19.2-188.3. Chain of custody form as evidence of chain of custody of evidence described therein.

A chain of custody form prepared and duly attested by a law-enforcement agency employee responsible for the custody of any physical evidence documented in the form shall be prima facie evidence in a criminal or civil proceeding as to the chain of custody of the physical evidence described therein from the time such evidence is received by a person employed by such law-enforcement agency, provided a copy of such form is mailed or delivered by the clerk or attorney for the Commonwealth to counsel of record for the accused at least 10 days prior to the hearing or trial. If counsel of record for the accused does not provide written objection to the attorney for the Commonwealth, providing a copy of such objection to the court, at least three days prior to the hearing or trial, the defendant will be deemed to have waived any objection at the hearing or trial based upon the absence of either the person who prepared the chain of custody form or any of the persons named in the chain of custody form.

Any such chain of custody form purporting to be signed by any such employee shall be admissible as evidence in a criminal or civil proceeding without any proof of the seal or signature or of the official character of the person whose name is signed to it. The signature of the person who received and maintained the evidence for the law-enforcement agency on the evidence form shall be deemed prima facie evidence that the person receiving and maintaining the evidence was an authorized agent and that such receipt constitutes proper receipt and maintenance by the law-enforcement agency for purposes of this section.

§ 19.2-188.4. Right to examine person involved in chain of custody.

The accused in any proceeding in which a certificate of chain of custody is admitted into evidence pursuant to § 19.2-188.3 shall have the right to call any person involved in the chain of custody as a witness therein, and examine him in the same manner as if he had been called as an adverse witness. Such witness shall be summoned and appear at the cost of the Commonwealth.