INTRODUCED

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SENATE BILL NO. 298

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact §§ 19.2-265.3 and 19.2-398 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 16.1-131.1, relating to constitutional challenges.

Patron—Cuccinelli

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-265.3 and 19.2-398 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-131.1 as follows:

§ 16.1-131.1. Procedure when constitutionality of a statute is challenged in a court not of record.

In any criminal case in a court not of record, if the defendant moves for the dismissal of a warrant on the ground that a statute or local ordinance is unconstitutional, the court shall remove the case, together with all papers, documents, and evidence connected therewith, to the circuit court.

§ 19.2-265.3. Nolle prosequi.

Nolle prosequi shall be entered ~~only~~ ~~in~~ ~~the~~ ~~discretion~~ ~~of~~ ~~the~~ ~~court,~~ upon motion of the Commonwealth ~~with~~ ~~good~~ ~~cause~~ ~~therefor~~ ~~shown~~.

§ 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 Constitution of the United States, Article I, Section 8 of the Constitution of Virginia, or § 19.2-243; *or* (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.

E. A pretrial appeal may be taken in any criminal case from an order of a circuit court dismissing a warrant, information or indictment, or any count or charge thereof, on the ground that a statute or local ordinance on which the order is based is unconstitutional.