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SENATE BILL NO. 123

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 29, 2008)

(Patron Prior to Substitute—Senator Edwards)

A *BILL to amend and reenact § 19.2-270.4 of the Code of Virginia, relating to destruction of trial exhibits.*

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-270.4 of the Code of Virginia is amended and reenacted as follows:**

§ 19.2-270.4. When donation, destruction or return of exhibits received in evidence authorized.

A. Except as provided in § 19.2-270.4:1 and unless objection with sufficient cause is made, the trial court in any criminal case may order the donation or destruction of any or all exhibits received in evidence during the course of the trial (i) *in any misdemeanor case*, at any time after the expiration of the time for filing an appeal from the final judgment of the court if no appeal is taken or (ii) if an appeal is taken, at any time after exhaustion of all appellate remedies *and (ii) in any felony case, upon notice to the attorney for the Commonwealth, the defendant at his last known address, and attorney of record for the defendant in the case, after more than one year has expired from exhaustion of all appellate remedies, or, if no appeal is taken, after more than one year from the time for seeking appellate remedies has expired; provided, however, if a petition for writ of habeas corpus is filed within such one-year period, then such order shall not be entered until exhaustion of such habeas corpus proceedings.* The order of donation or destruction may require that photographs be made of all exhibits ordered to be donated or destroyed and that such photographs be appropriately labeled for future identification. In addition, the order shall state the nature of the exhibit subject to donation or destruction, identify the case in which such exhibit was received and from whom such exhibit was received, if known, and the manner by which the exhibit is to be destroyed or to whom donated.

B. Except as provided in § 19.2-270.4:1, a circuit court for good cause shown, on notice to the attorney for the Commonwealth and any attorney for a defendant in the case, may order the return of any or all exhibits to the owners thereof, notwithstanding the pendency of any appeal *or petition for a writ of habeas corpus.* The order may be upon such conditions as the court deems appropriate for future identification and inclusion in the record of a case subject to retrial. In addition, the owner shall acknowledge in a sworn affidavit to be filed with the record of the case, that he has retaken possession of such exhibit or exhibits.

C. Any photographs taken pursuant to an order of donation or destruction or an order returning exhibits to the owners shall be retained with the record in the case and, if necessary, shall be admissible in any subsequent trial of the same cause, subject to all other rules of evidence.

D. Upon petition of any organization which is exempt from taxation under § 501 (c) (3) of the Internal Revenue Code, the court in its sound discretion may order the donation of an exhibit to such charitable organization.