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SENATE BILL NO. 1362

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact § 19.2-266.2 of the Code of Virginia, relating to defense motions to suppress evidence, objections on constitutional grounds.

Patron—Reynolds

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-266.2 of the Code of Virginia is amended and reenacted as follows:**

§ 19.2-266.2. Defense objections to be raised before trial; hearing; bill of particulars.

A. 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; (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 Constitution of the United States, 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.

B. Such a motion or objection in a proceeding in circuit court shall be raised in writing, before trial. The motions or objections shall *state with particularity the ground or grounds on which they are based and shall* be filed and notice given to opposing counsel not later than seven days before trial in circuit court or, if made under clause (ii) of subsection A, at such time prior to trial in circuit court 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 in circuit court, unless such period is waived by the accused, as set by the trial judge. The circuit 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.

C. To assist the defense in filing such motions or objections in a timely manner, ~~the circuit court shall, upon motion of the defendant, direct the Commonwealth to file a bill of particulars pursuant to § 19.2-230. The circuit court shall fix the time within which such bill of particulars is to be filed. Upon further motion of the defendant, the circuit 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 the defense may make a written request to the attorney for the Commonwealth describing the information that the defense requires in order to state with particularity the grounds upon which such motion or objection is or may be based. Unless such information is otherwise provided to the defendant, the attorney for the Commonwealth shall provide a summary of the relevant facts related to such request. The attorney for the Commonwealth shall certify that the information in the summary is true and accurate to the best of his knowledge and belief. Upon motion of the defendant, the circuit court may, upon a showing of good cause, direct the Commonwealth to provide the summary in writing or to supplement the summary.~~

D. In a criminal proceeding in district court, any motion or objection as described in subsection A may be raised prior to or at such proceeding. In the event such a motion or objection is raised, the district court shall, upon motion of the Commonwealth grant a continuance for good cause shown.

INTRODUCED

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