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## HOUSE BILL NO. 1393

Offered February 17, 2010

A BILL to amend and reenact §§ 19.2-157 and 19.2-160 of the Code of Virginia, relating to incarceration option for certain misdemeanors.

Patron—Griffith

Introduced at the request of the Governor

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 19.2-157 and 19.2-160 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-157. Duty of court when accused appears without counsel.

Except as may otherwise be provided in §§ 16.1-266 through 16.1-268, and subject to the provisions of § 19.2-160, whenever a person charged with a criminal offense the penalty for which may be death or confinement in the state correctional facility or jail, including charges for revocation of suspension of imposition or execution of sentence or probation, appears before any court without being represented by counsel, the court shall inform him of his right to counsel. The accused shall be allowed a reasonable opportunity to employ counsel or, if appropriate, the statement of indigence provided for in § 19.2-159 may be executed.

§ 19.2-160. Appointment of counsel or waiver of right.

A. If the charge against the accused is a ~~crime~~ misdemeanor, the penalty for which may be incarceration, no penalty of incarceration shall be imposed by a court unless (i) the offense is punishable by mandatory minimum punishment, (ii) the prosecuting attorney has filed a previous notice of election with the court setting forth the particular misdemeanors, or classes or categories of misdemeanors for which he deems incarceration is appropriate, or (iii) the prosecuting attorney affirmatively advises the court, at any time prior to the commencement of the trial, that incarceration is appropriate in the instant case. If, pursuant to this subsection, no penalty of incarceration is to be imposed, the court shall not appoint counsel for the accused.

B. If the accused is not represented by counsel and the charge against him is a felony or any misdemeanor described in subsection A for which the penalty of incarceration is mandatory or appropriate, and the accused is not represented by counsel, the court shall ascertain by oral examination of the accused whether or not the accused he desires to waive his right to counsel. When necessary, and consistent with the provisions of § 19.2-243, the court shall continue the case so that counsel may be appointed.

C. In the event the accused desires to waive his right to counsel, and the court ascertains that such waiver is voluntary and intelligently made, then the court shall provide the accused with a statement to be executed by the accused to document his waiver. The statement shall be in a form designed and provided by the Supreme Court. Any executed statement herein provided for shall be filed with and become a part of the record of such proceeding.

In the absence of a waiver of counsel by the accused, and if he shall claim that he is indigent, the court shall proceed in the same manner as is provided in § 19.2-159.

D. Should the defendant refuse or otherwise fail to sign either of the statements described in this section and § 19.2-159, the court shall note such refusal on the record. Such refusal shall be deemed to be a waiver of the right to counsel, and the court, after so advising the accused and offering him the opportunity to rescind his refusal shall, if such refusal is not rescinded and the accused's signature given, proceed to hear and decide the case. However, if, prior to the commencement of the trial, the court states in writing, either upon the request of the attorney for the Commonwealth or, in the absence of the attorney for the Commonwealth, upon the court's own motion, that a sentence of incarceration will not be imposed if the defendant is convicted, the court may try the case without appointing counsel, and in such event no sentence of incarceration shall be imposed.

E. For purposes of this section, "prosecuting attorney" means the attorney for the Commonwealth and, when the prosecution is for a violation of a local ordinance, the attorney who prosecutes ordinance violations for the locality.

INTRODUCED

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