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HOUSE BILL NO. 456

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact §§ 19.2-183 and 19.2-187.1 of the Code of Virginia, relating to admissibility of certificates of analysis at hearing and trial.*

Patron—Herring

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 19.2-183 and 19.2-187.1 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-183. Examination of witnesses; assistance of counsel; evidentiary matters and remedies; power to adjourn case.

A. The judge before whom any person is brought for an offense shall, as soon as may be practical, in the presence of such person, examine on oath the witnesses for and against him. Before conducting the hearing or accepting a waiver of the hearing, the judge shall advise the accused of his right to counsel and, if the accused is indigent and the offense charged be punishable by confinement in jail or the state correctional facility, the judge shall appoint counsel as provided by law.

B. At the hearing the judge shall, in the presence of the accused, hear testimony presented for and against the accused in accordance with the rules of evidence applicable to criminal trials in this Commonwealth. In felony cases, the accused shall not be called upon to plead, but he may cross-examine ~~witnesses~~ *any witness who testifies on behalf of the Commonwealth*, introduce witnesses in his own behalf, and testify in his own behalf.

C. A judge may adjourn a trial, pending before him, not exceeding ~~ten~~ 10 days at one time, without the consent of the accused.

D. *At any hearing under this section, certificates of analysis and reports prepared pursuant to §§ 19.2-187 and 19.2-188 shall be admissible without the testimony of the person preparing such certificate or report.*

§ 19.2-187.1. Procedures for notifying accused of certificate of analysis; waiver; continuances.

A. In any trial and in any hearing other than a preliminary hearing, in which the attorney for the Commonwealth intends to offer a certificate of analysis into evidence pursuant to § 19.2-187, the attorney for the Commonwealth shall:

1. Provide by mail, delivery, or otherwise, a copy of the certificate to counsel of record for the accused, or to the accused if he is proceeding pro se, at no charge, no later than 28 days prior to the hearing or trial;

2. Attach to the copy of the certificate so provided under subdivision 1 a notice to the accused of his right to object to having the certificate admitted without the person who performed the analysis or examination being present and testifying; and

3. File a copy of the certificate and notice with the clerk of the court hearing the matter on the day that the certificate and notice are provided to the accused.

B. The accused may object in writing to admission of the certificate of analysis, in lieu of testimony, as evidence of the facts stated therein and of the results of the analysis or examination. Such objection shall be filed with the court hearing the matter, with a copy to the attorney for the Commonwealth, no more than 14 days after the certificate and notice were filed with the clerk by the attorney for the Commonwealth or the objection shall be deemed waived. If timely objection is made, the certificate shall not be admissible into evidence unless (i) the testimony of the person who performed the analysis or examination is admitted into evidence describing the facts and results of the analysis or examination during the Commonwealth's case-in-chief at the hearing or trial and that person is present and subject to cross-examination by the accused, (ii) the objection is waived by the accused or his counsel in writing or before the court, or (iii) the parties stipulate before the court to the admissibility of the certificate.

C. Where the person who performed the analysis and examination is not available for hearing or trial and the attorney for the Commonwealth has used due diligence to secure the presence of the person, the court shall order a continuance. Any continuances ordered pursuant to this subsection shall total not more than 90 days if the accused has been held continuously in custody and not more than 180 days if the accused has not been held continuously in custody.

D. Any objection by counsel for the accused, or the accused if he is proceeding pro se, to timeliness of the receipt of notice required by subsection A shall be made before hearing or trial upon his receipt of actual notice unless the accused did not receive actual notice prior to hearing or trial. A showing by

59 the Commonwealth that the notice was mailed, delivered, or otherwise provided in compliance with the
60 time requirements of this section shall constitute prima facie evidence that the notice was timely
61 received by the accused. If the court finds upon the accused's objection made pursuant to this
62 subsection, that he did not receive timely notice pursuant to subsection A, the accused's objection shall
63 not be deemed waived and if the objection is made prior to hearing or trial, a continuance shall be
64 ordered if requested by either party. Any continuance ordered pursuant to this subsection shall be subject
65 to the time limitations set forth in subsection C.

66 E. *Nothing in this section shall prohibit the admissibility of a certificate of analysis if the person*
67 *who performed the analysis and examination testifies at trial or the hearing concerning the facts stated*
68 *therein and of the results of the analysis or examination.*

69 F. The accused in any hearing or trial in which a certificate of analysis is offered into evidence shall
70 have the right to call the person performing such analysis or examination or involved in the chain of
71 custody as a witness therein, and examine him in the same manner as if he had been called as an
72 adverse witness. Such witness shall be summoned and appear at the cost of the Commonwealth.
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