

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 19.2-270.4 of the Code of Virginia, relating to destruction, etc., of*  
3 *exhibits; notice.*

4  
5 Approved

[H 979]

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

7 **1. That § 19.2-270.4 of the Code of Virginia is amended and reenacted as follows:**

8 § 19.2-270.4. When donation, destruction or return of exhibits received in evidence authorized.

9 A. Except as provided in § 19.2-270.4:1 and unless objection with sufficient cause is made, the trial  
10 court in any criminal case may order the donation or destruction of any or all exhibits received in  
11 evidence during the course of the trial (i) in any misdemeanor case, at any time after the expiration of  
12 the time for filing an appeal from the final judgment of the court if no appeal is taken or if an appeal is  
13 taken, at any time after exhaustion of all appellate remedies and (ii) in any felony case, upon notice to  
14 the attorney for the Commonwealth, the defendant at his last known address, and attorney of record for  
15 the defendant in the case, after more than one year has expired from exhaustion of all appellate  
16 remedies, or, if no appeal is taken, after more than one year from the time for seeking appellate  
17 remedies has expired; provided, however, if a petition for writ of habeas corpus is filed within such  
18 one-year period, then such order shall not be entered until exhaustion of such habeas corpus  
19 proceedings. The order of donation or destruction may require that photographs be made of all exhibits  
20 ordered to be donated or destroyed and that such photographs be appropriately labeled for future  
21 identification. In addition, the order shall state the nature of the exhibit subject to donation or  
22 destruction, identify the case in which such exhibit was received and from whom such exhibit was  
23 received, if known, and the manner by which the exhibit is to be destroyed or to whom donated. *No*  
24 *notice to the defendant shall be required by this section in the case of exhibits the disposal or*  
25 *destruction of which is controlled by § 19.2-386.23 or 19.2-386.24, in any case in which such exhibits*  
26 *may be seized and forfeited to the Commonwealth under Chapter 22.1 (§ 19.2-386.1 et seq.) or Chapter*  
27 *22.2 (§ 19.2-386.15 et seq.), or any other forfeiture provisions, or in any case where such exhibits are*  
28 *deemed contraband.*

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

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

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

ENROLLED

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