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HOUSE BILL NO. 1196

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 3, 2014)

(Patron Prior to Substitute—Delegate Cline)

*A BILL to amend and reenact §§ 17.1-123, 18.2-374.1:1, 19.2-165, 27-42, 55-142.3, and 64.2-505 of the Code of Virginia, relating to clerks offices; recordation.***Be it enacted by the General Assembly of Virginia:****1. That §§ 17.1-123, 18.2-374.1:1, 19.2-165, 27-42, 55-142.3, and 64.2-505 of the Code of Virginia are amended and reenacted as follows:****§ 17.1-123. How orders are recorded and signed.**

A. All orders that make up each day's proceedings of every circuit court shall be recorded by the clerk in a book known as the order book. Orders that make up each day's proceedings that have been recorded in the order book shall be deemed ~~authenticated~~ *the official record pursuant to § 8.01-389* when (i) the judge's signature is shown in the order, (ii) the judge's signature is shown in the order book, or (iii) an order is recorded in the order book on the last day of each term showing the signature of each judge presiding during the term.

B. If a judge dies, retires or resigns before orders recorded in the order book have been authenticated, the orders shall have the same force and effect and shall be deemed authenticated when the signature of another judge of the same circuit court or the signature of the judge appointed to fill the vacancy or to preside over the court until the vacancy is filled is authenticated as provided in subsection A.

§ 18.2-374.1:1. Possession, reproduction, distribution, solicitation, and facilitation of child pornography; penalty.

A. Any person who knowingly possesses child pornography is guilty of a Class 6 felony.

B. Any person who commits a second or subsequent violation of subsection A is guilty of a Class 5 felony.

C. Any person who (i) reproduces by any means, including by computer, sells, gives away, distributes, electronically transmits, displays with lascivious intent, purchases, or possesses with intent to sell, give away, distribute, transmit, or display child pornography with lascivious intent or (ii) commands, entreats, or otherwise attempts to persuade another person to send, submit, transfer or provide to him any child pornography in order to gain entry into a group, association, or assembly of persons engaged in trading or sharing child pornography shall be punished by not less than five years nor more than 20 years in a state correctional facility. Any person who commits a second or subsequent violation under this subsection shall be punished by a term of imprisonment of not less than five years nor more than 20 years in a state correctional facility, five years of which shall be a mandatory minimum term of imprisonment. The mandatory minimum terms of imprisonment prescribed for violations of this section shall be served consecutively with any other sentence.

D. Any person who intentionally operates an Internet website for the purpose of facilitating the payment for access to child pornography is guilty of a Class 4 felony.

E. All child pornography shall be subject to lawful seizure and forfeiture pursuant to § 19.2-386.31.

F. For purposes of this section it may be inferred by text, title or appearance that a person who is depicted as or presents the appearance of being less than 18 years of age in sexually explicit visual material is less than 18 years of age.

G. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act occurs or where any child pornography is produced, reproduced, found, stored, received, or possessed in violation of this section.

H. The provisions of this section shall not apply to any such material that is possessed for a bona fide medical, scientific, governmental, law-enforcement, or judicial purpose by a physician, psychologist, scientist, attorney, employee of a law-enforcement agency, ~~or~~ judge, *or clerk* who possesses such material in the course of conducting his professional duties as such.

§ 19.2-165. Recording evidence and incidents of trial in felony cases; cost of recording; cost of transcripts; certified transcript deemed prima facie correct; request for copy of transcript.

In all felony cases, the court or judge trying the case shall by order entered of record provide for the recording verbatim of the evidence and incidents of trial either by a court reporter or by mechanical or electronic devices approved by the court. The expense of reporting or recording the trial of criminal cases shall be paid by the Commonwealth out of the appropriation for criminal charges, upon approval of the trial judge. However, if the defendant is convicted, the Commonwealth shall be entitled to receive the amount allocated to the court reporter fund under the fixed felony fee. Localities that maintain

60 mechanical or electronic devices for this purpose shall be entitled to retain their reasonable expenses
61 attributable to the cost of operating and maintaining such equipment. *The clerk shall receive the*
62 *evidence at the time of admission of such evidence by the court and shall maintain control over such*
63 *evidence until the time such evidence is transferred on appeal, or destroyed or returned in accordance*
64 *with law.*

65 In all felony cases where it appears to the court from the affidavit of the defendant and other
66 evidence that the defendant intends to seek an appeal and is financially unable to pay such costs or to
67 bear the expense of a copy of the transcript of the evidence for an appeal, the trial court shall, upon the
68 motion of counsel for the defendant, order the evidence transcribed for such appeal and all costs therefor
69 paid by the Commonwealth out of the appropriation for criminal charges. If the conviction is not
70 reversed, all costs paid by the Commonwealth, under the provisions hereof, shall be assessed against the
71 defendant.

72 The reporter or other individual designated to report and record the trial shall file the original
73 shorthand notes or other original records with the clerk of the circuit court who shall preserve them in
74 the public records of the court for not less than five years if an appeal was taken and a transcript was
75 prepared, or ten years if no appeal was taken. The transcript in any case certified by the reporter or
76 other individual designated to report and record the trial shall be deemed prima facie a correct statement
77 of the evidence and incidents of trial.

78 Upon the request of any counsel of record, or of any party not represented by counsel, and upon
79 payment of the reasonable cost thereof, the court reporter covering any proceeding shall provide the
80 requesting party with a copy of the transcript of such proceeding or any requested portion thereof.

81 The court shall not direct the court reporter to cease recording any portion of the proceeding without
82 the consent of all parties or of their counsel of record.

83 The administration of this section shall be under the direction of the Supreme Court of Virginia.

84 **§ 27-42. Definition of term "volunteer fire fighters."**

85 For the purposes of this article, the term "volunteer fire fighters" shall include only members of any
86 organized fire-fighting company which has in its possession and operates fire-fighting apparatus and
87 equipment, whose members serve without pay and whose names are maintained on a list kept by the
88 secretary of such company. It shall be the responsibility of the secretary of such company *or the*
89 *secretary's designee* to (i) file the list with the office of the clerk of the circuit court where such
90 company is located, (ii) keep the list of such members up to date, and (iii) file the updated list with the
91 clerk in a timely manner. The clerk shall not be responsible to obtain the list or an updated list from the
92 secretary of the fire-fighting company if the list is not filed with the clerk.

93 **§ 55-142.3. Duties of filing officers.**

94 A. If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any
95 certificate described in subsection B is presented to the filing officer and

96 1. He is the clerk of the State Corporation Commission, he shall cause the notice to be marked, held
97 and indexed in accordance with the provisions of § 8.9A-519 as if the notice were a financing statement
98 within the meaning of that Code; or

99 2. He is any other officer described in § 55-142.1, he shall endorse thereon his identification and the
100 date and time of receipt and forthwith file it alphabetically or enter it in an alphabetical index showing
101 the name and address of the person named in the notice, the date and time of receipt, the serial number
102 of the district director in the case of tax liens, ~~the title and address of the official or entity certifying the~~
103 ~~lien,~~ and the total amount appearing on the notice of lien, and shall index and record the same where
104 judgments are indexed and recorded.

105 B. If a certificate of release, nonattachment, discharge or subordination of any lien is presented to the
106 clerk of the State Corporation Commission for filing he shall:

107 1. Cause a certificate of release or nonattachment to be marked, held and indexed as if the certificate
108 were a termination statement within the meaning of § 8.9A-513, except that the notice of lien to which
109 the certificate relates shall not be removed from the files; and

110 2. Cause a certificate of discharge or subordination to be held, marked and indexed as if the
111 certificate were a release of collateral within the meaning of § 8.9A-512.

112 C. If a refiled notice of federal lien referred to in subsection A or any of the certificates or notices
113 referred to in subsection B is presented for filing to any other filing officer specified in § 55-142.1, he
114 shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter
115 the refiled notice or the certificate with the date of filing in any alphabetical lien index on the line
116 where the original notice of lien is entered.

117 D. Upon request of any person, the filing officer shall issue his certificate showing whether there is
118 on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien
119 filed under this article, naming a particular person, and if a notice or certificate is on file, giving the
120 date and hour of filing of each notice or certificate. The fee for a certificate is one dollar. Upon request
121 the filing officer shall furnish a copy of any notice of federal tax lien or notice or certificate affecting a

122 federal lien for a fee of fifty cents per page.

123 **§ 64.2-505. When security not required.**

124 A. The court or clerk shall require a personal representative to furnish security. However, the court
125 or clerk shall not require a personal representative to furnish security if:

126 1. All distributees of a decedent's estate or all beneficiaries under the decedent's will are personal
127 representatives of that decedent's estate, whether serving alone or with others who are not distributees or
128 beneficiaries; however, if all personal representatives of a testate decedent are entitled to file a statement
129 in lieu of an accounting under § 64.2-1314, the security shall be required only upon the portion of their
130 bond given in connection with the property passing to beneficiaries who are not personal representatives;

131 or

132 2. The will waives security of an executor nominated therein.

133 B. Notwithstanding subsection A, upon the motion of a legatee, devisee, or distributee of an estate,
134 or any person who has a pecuniary interest in an estate, *or upon motion of the court* ~~may require that or~~
135 *clerk, the personal representative may be required to* furnish security. A copy of such motion shall be
136 served upon the personal representative. The court shall conduct a hearing on the motion and may
137 require the personal representative to furnish security in an amount it deems sufficient and may award
138 the movant reasonable attorney fees and costs which shall be paid out of the estate.

139 C. This section shall be deemed to permit qualification without security where the personal
140 representative is the only distributee or only beneficiary by virtue of one or more instruments of
141 disclaimer filed prior to, or at the time of, such personal representative's qualification.