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HOUSE BILL NO. 2452

Offered January 20, 2017

A BILL to amend and reenact § 19.2-265.4 of the Code of Virginia, relating to discovery in criminal cases; duty to provide.

Patron—Morris

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-265.4 of the Code of Virginia is amended and reenacted as follows:****§ 19.2-265.4. Failure to provide discovery.**

A. In any criminal prosecution for a felony in a circuit court or for a misdemeanor brought on direct indictment, the attorney for the Commonwealth shall have a duty to adequately and fully provide discovery as provided in subsections B and C and under Rule 3A:11 of the Rules of the Supreme Court of Virginia; however, in the case of a variance between subsections B and C and Rule 3A:11, such variance shall be construed to give effect to subsections B and C. Rule 3A:11 shall be construed to apply to such felony and misdemeanor prosecutions. This duty to disclose shall be continuing and shall apply to any additional evidence or material discovered by the Commonwealth prior to or during trial which is subject to discovery or inspection and has been previously requested by the accused. In any criminal prosecution for a misdemeanor by trial de novo in circuit court, the attorney for the Commonwealth shall have a duty to adequately and fully provide discovery as provided under Rule 7C:5 of the Rules of the Supreme Court of Virginia.

B. Upon written notice by an accused to the court and to the attorney for the Commonwealth, the attorney for the Commonwealth shall permit the accused to inspect, copy, or photograph:

1. Any relevant (i) written or recorded statements or confessions made by the accused or any codefendants and the substance of any oral statements or confessions made by the accused or any codefendants to any law-enforcement officer, the existence of which is known to the attorney for the Commonwealth, and (ii) written reports of autopsies, ballistic tests, fingerprint analyses, handwriting analyses, blood, urine, and breath tests, other scientific reports, and written reports of a physical or mental examination of the accused or the alleged victim made in connection with the particular case that are known by the attorney for the Commonwealth to be within the possession, custody, or control of the Commonwealth;

2. Designated books, papers, documents, tangible objects, buildings, or places, or copies or portions thereof, that are within the possession, custody, or control of the Commonwealth, provided that the attorney for the Commonwealth may object to the reasonableness of the request; and

3. All relevant police reports, except as otherwise provided by statute.

C. For good cause, the attorney for the Commonwealth may withhold or redact personally identifying information to protect the personal or financial security of a victim or witness or medical records, or condition the disclosure of such information on restricting copying or dissemination of such information, including limiting disclosure to the accused's counsel. The accused may file a motion to compel disclosure of any information withheld or redacted.

D. If the accused files a written notice in accordance with subsection B, the accused shall permit the Commonwealth to inspect, copy, or photograph any (i) books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, tangible objects, or copies or portions thereof which are within the possession, custody, or control of the accused and which the accused intends to introduce in evidence at the trial and (ii) photograph results or reports of physical or mental examinations or of tests, measurements, or experiments made in connection with the case, or copies thereof, within the possession and control of the accused which the accused intends to introduce in evidence at the trial or which were prepared by a witness whom the accused intends to call at the trial, when the results or reports relate to his testimony. Such duty to provide discovery pursuant to this subsection shall be in addition to any duty to provide discovery pursuant to Rule 3A:11 of the Rules of Supreme Court of Virginia.

E. If at any time during the course of the proceedings it is brought to the attention of the court that the attorney for the Commonwealth or the accused has failed to comply with this section, the court may order the Commonwealth or the accused to permit the discovery or inspection, grant a continuance, or prohibit the Commonwealth or the accused from introducing evidence not disclosed, or the court may enter such other order as it deems just under the circumstances.

INTRODUCED

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