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HOUSE BILL NO. 210

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice on February 5, 2018)

(Patron Prior to Substitute—Delegate Mullin)

A BILL to amend the Code of Virginia by adding a section numbered 16.1-296.3, relating to pretrial appeals by the Commonwealth from juvenile and domestic relations district court.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 16.1-296.3 as follows:

§ 16.1-296.3. Appeals by the Commonwealth.

A. In any delinquency case in which a juvenile under the age of 14 is to be tried for an offense listed in subsection B of § 16.1-269.1 or any juvenile is to be tried for an offense listed in subsection C of § 16.1-269.1, a pretrial appeal from a juvenile and domestic relations district court may be taken to the circuit court by the Commonwealth from an order of a juvenile and domestic relations district court prohibiting the use of certain evidence at trial on the grounds that such evidence was obtained in violation of the provisions of the Fourth, Fifth, or Sixth Amendment to the Constitution of the United States or Article I, Section 8, 10, or 11 of the Constitution of Virginia prohibiting illegal searches and seizures and protecting rights against self-incrimination, provided that the Commonwealth certifies that the appeal is not taken for purpose of delay and that the evidence is substantial proof of a fact material in the proceeding.

B. If a juvenile and domestic relations district court enters an order described in subsection A, the attorney for the Commonwealth may within seven days after the entry of the order or before the juvenile and domestic relations district court begins to hear or receive evidence or the first witness is sworn, whichever occurs first, file a notice of appeal with the clerk of the juvenile and domestic relations district court. Upon the filing of a notice of appeal, the juvenile and domestic relations district court shall stay the proceedings and transmit the case to the circuit court. The attorney for the Commonwealth shall file a transcript or written statement of facts with the clerk of the juvenile and domestic relations district court and a notice, signed by the attorney for the Commonwealth, identifying the transcript or written statement of facts and reciting its filing with the clerk within 10 days after filing the notice of appeal. There shall be appended to the notice a certificate by the attorney for the Commonwealth that a copy of the notice has been mailed or delivered to opposing counsel. Any party may object to the transcript or written statement of facts on the ground that it is erroneous or incomplete within 10 days after the notice of filing of the transcript or written statement of facts is filed in the office of the clerk. The judge of the juvenile and domestic relations district court shall, within three days after the filing of such objection, overrule the objection, or take steps deemed necessary to make the record complete or certify the respect in which the record is incomplete, and sign the transcript or written statement of facts to verify its accuracy. The clerk of the juvenile and domestic relations district court shall immediately transmit the record to the clerk of the circuit court.

C. The order of the juvenile and domestic relations district court shall be reviewed by the circuit court on the record to determine whether the evidence should have been suppressed. The circuit court shall give deference to the factual findings of the juvenile and domestic relations district court but shall conduct a de novo determination of the application of the law to the facts. The circuit court shall consider such facts in the light most favorable to the juvenile. Any pretrial appeal pursuant to this section shall be given precedence on the docket of the circuit court. Upon receipt of the record pursuant to subsection B, the circuit court shall establish a schedule for the parties to submit briefs and conduct a hearing on the appeal. The circuit court shall enter an order rendering its decision within 30 days after receipt of the record. The circuit court shall establish a schedule for the parties to submit briefs. The circuit court shall preserve all records connected with the case in files separate from other files and records of the court in accordance with the provisions of § 16.1-302, and such records shall be open for inspection only in accordance with the provisions of § 16.1-305.

D. The Commonwealth may appeal the decision of the circuit court to the Court of Appeals, and the decision of the Court of Appeals shall be final and no further appeal shall lie to the Supreme Court. However, if either the circuit court or the Court of Appeals determines that the evidence should not have been suppressed, the court making such determination shall remand the case to the juvenile and domestic relations district court for trial consistent with the court's ruling.

E. The provisions of § 16.1-277.1 shall apply to a juvenile whose delinquency case is the subject of a pretrial appeal pursuant to this section, and the filing of a pretrial appeal shall not divest the juvenile and domestic relations district court of the jurisdiction to enter any orders in accordance with § 16.1-277.1.

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60 *F. A circuit court judge hearing a pretrial appeal pursuant to this section shall not hear any appeal*
61 *by the juvenile of the final judgment or order in the juvenile's case unless the parties agree otherwise.*