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SENATE BILL NO. 142

Offered January 10, 2018

Prefiled December 27, 2017

A BILL to amend and reenact §§ 16.1-133, 16.1-133.1, and 19.2-258 of the Code of Virginia, relating to appeal to circuit court; failure to appear.

Patron—Petersen

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-133, 16.1-133.1, and 19.2-258 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-133. Withdrawal of appeal.

Notwithstanding the provisions of § 16.1-135, any person convicted in a general district court, a juvenile and domestic relations district court, or a court of limited jurisdiction of an offense not felonious may, at any time before the appeal is heard, withdraw an appeal which has been noted, pay the fine and costs to such court, and serve any sentence which has been imposed.

A person withdrawing an appeal shall give written notice of withdrawal to the court and counsel for the prosecution prior to the hearing date of the appeal. If the appeal is withdrawn more than ~~ten~~ 10 days after conviction, the circuit court shall forthwith enter an order affirming the judgment of the lower court and the clerk shall tax the costs as provided by statute. Fines and costs shall be collected by the circuit court, and all papers shall be retained in the circuit court clerk's office.

Where the withdrawal is within ~~ten~~ 10 days after conviction, no additional costs shall be charged, and the judgment of the lower court shall be imposed without further action of the circuit court.

For purposes of this section, a person's failure to appear in circuit court in accordance with the condition of his bail, recognizance, or promise to appear constitutes a withdrawal of an appeal, provided that the person is notified in writing at the time he notes his appeal that his failure to appear in circuit court constitutes a withdrawal of the appeal.

§ 16.1-133.1. Reopening case after conviction.

Within ~~sixty~~ 60 days from the date of conviction of any person in a general district court or juvenile and domestic relations district court for an offense not felonious, the case may be reopened upon the application of such person and for good cause shown. Such application shall be heard by the judge who presided at the trial in which the conviction was had, but if he be not in office, or be absent from the county or city or is otherwise unavailable to hear the application, it may be heard by his successor or by any other judge or substitute judge of such court. If the case is reopened after the case documents have been filed with the circuit court, the clerk of the circuit court shall return the case documents to the district court in which the case was originally tried.

Within 60 days of an order entered by the circuit court affirming the judgment of the district court pursuant to § 16.1-133 as a result of a person's failure to appear in circuit court, and upon application of such person and a showing that such person's failure to appear was not willful, the circuit court may vacate its order affirming the judgment of the district court, reopen the case, and proceed pursuant to § 16.1-136.

§ 19.2-258. Trial of misdemeanors by court without jury; failure to appear deemed waiver of jury.

A. In all cases of a misdemeanor upon a plea of guilty, tendered in person by the accused or his counsel, the court shall hear and determine the case without the intervention of a jury. If the accused plead not guilty, in person or by his counsel, the court, in its discretion, with the concurrence of the accused and the attorney for the Commonwealth, may hear and determine the case without the intervention of a jury. In each instance the court shall have and exercise all the powers and duties vested in juries by any statute relating to crimes and punishments.

B. When a person charged with a misdemeanor has been admitted to bail or released upon his own recognizance for his appearance before a court of record having jurisdiction of the case, for a hearing thereon and fails to appear in accordance with the condition of his bail or recognizance, he shall be deemed to have waived trial by a jury and the case may be heard in his absence as upon a plea of not guilty. *Nothing herein shall preclude a court having jurisdiction of a case upon appeal from a district court from affirming the judgment of the district court in accordance with § 16.1-133.*

INTRODUCED

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