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## SENATE BILL NO. 224

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

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

(Patron Prior to Substitute—Senator Petersen)

A *BILL to amend and reenact § 19.2-386.5 of the Code of Virginia, relating to release of seized property; petition to stay release.*

**Be it enacted by the General Assembly of Virginia:****1. That § 19.2-386.5 of the Code of Virginia is amended and reenacted as follows:****§ 19.2-386.5. Release of seized property.**

A. At any time prior to the filing of an information, the attorney for the Commonwealth in the county or city in which the property has been seized pursuant to Chapter 22.2 (§ 19.2-386.15 et seq.) or other provision under the Code may, in his discretion, upon the payment of costs incident to the custody of the seized property, return the seized property to an owner or lien holder, without requiring that the owner or lien holder post bond as provided in § 19.2-386.6, if he believes the property is properly exempt from forfeiture pursuant to § 19.2-386.8.

B. *Notwithstanding any other provision of law, a lawful property owner or lienholder may file a petition after one year from the date of seizure to reclaim any property seized under this Title, unless (i) an information has been filed against that property or (ii) such property is being used as evidence in a criminal proceeding following an indictment, arrest by warrant, or service of a petition in the case of a juvenile adjudication. A copy of the property owner's or lienholder's petition shall be served on the attorney for the Commonwealth in the jurisdiction of the property's seizure. The attorney for the Commonwealth shall have 21 days to respond or otherwise return the property. If the attorney for the Commonwealth contends that the property should continue to remain in the possession of the Commonwealth, the Commonwealth shall have the burden to prove, by the preponderance of the evidence, that the property seized is relevant to a criminal investigation or prosecution. Such review shall be conducted in camera. If the court determines that the Commonwealth has failed to meet its burden, the property shall be ordered returned to the lawful owner or lienholder. If the court finds that the Commonwealth has met its burden, the Commonwealth may retain property for an additional year from the court's ruling. If the property is not returned by the end of the subsequent year, the lawful owner or lienholder may file a subsequent petition.*