

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend the Code of Virginia by adding in Article 5 of Chapter 15 of Title 19.2 a section*
3 *numbered 19.2-266.4 and to repeal § 19.2-264.3:1.3 of the Code of Virginia, relating to ex parte*
4 *requests for expert assistance in criminal cases.*

5 [H 824]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**8 **1. That the Code of Virginia is amended by adding in Article 5 of Chapter 15 of Title 19.2 a**
9 **section numbered 19.2-266.4 as follows:**10 **§ 19.2-266.4. Expert assistance for indigent defendants.**11 *A. In any case in which a defendant is (i) charged with a felony offense or a Class 1 misdemeanor*
12 *and (ii) determined to be indigent by the court pursuant to § 19.2-159, the defendant or his attorney*
13 *may, upon notice to the Commonwealth, move the circuit court to designate another judge in the same*
14 *circuit to hear an ex parte request for appointment of a qualified expert to assist in the preparation of*
15 *the defendant's defense. No ex parte proceeding, communication, or request may be considered pursuant*
16 *to this section unless the defendant or his attorney states under oath or in a sworn declaration that a*
17 *need for confidentiality exists. A risk that trial strategy may be disclosed unless the hearing is ex parte*
18 *shall be sufficient grounds to establish a need for confidentiality.*19 *B. Upon receiving the defendant's or his attorney's declaration of need for confidentiality, the*
20 *designated ex parte judge shall conduct an ex parte hearing on the request for authorization to obtain*
21 *expert assistance. This hearing shall occur as soon as practicable. After a hearing upon the motion and*
22 *upon a showing that the provision of the requested expert services would materially assist the defendant*
23 *in preparing his defense and the denial of such services would result in a fundamentally unfair trial, the*
24 *court shall order the appointment of a qualified expert. Any expert appointed pursuant to this subsection*
25 *shall be compensated in accordance with § 19.2-332. The designated judge shall direct requests for*
26 *scientific investigations to the Department of Forensic Science or Division of Consolidated Laboratory*
27 *Services whenever practicable.*28 *C. All ex parte hearings conducted under this section shall be initiated by written motion and shall*
29 *be on the record. Except for the initial declaration of need for confidentiality, the record of the*
30 *hearings, together with all papers filed and orders entered in connection with ex parte requests for*
31 *expert assistance, all payment requests submitted by experts appointed, and the identity of all experts*
32 *appointed, shall be kept under seal as part of the record of the case and shall not be disclosed.*
33 *Following a decision on the motion, whether it is granted or denied, the motion, order or orders, and*
34 *all other papers or information related to the proceedings or expert assistance sought shall remain*
35 *under seal. On motion of any party, and for good cause shown, the court may unseal the foregoing*
36 *records after the trial is concluded.*37 *D. All ex parte proceedings, communications, or requests shall be transcribed and made part of the*
38 *record available for appellate review or any other post-conviction review.*39 **2. That § 19.2-264.3:1.3 of the Code of Virginia is repealed.**

ENROLLED

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