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SENATE BILL NO.801

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 28, 2020)

(Patron Prior to Substitute—Senator Morrissey)

A BILL to amend the Code of Virginia by adding a section numbered 19.2-10.4, relating to subpoena duces tecum; attorney-issued subpoena duces tecum; criminal cases.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 19.2-10.4 as follows:

§ 19.2-10.4. Subpoena duces tecum; attorney-issued subpoena duces tecum.

In any criminal case a subpoena duces tecum may be issued by the attorney of record who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. Any such subpoena duces tecum shall be on a form approved by the Executive Secretary of the Supreme Court, signed by the attorney of record as if a pleading, and shall include the attorney's address. A copy of the signed subpoena duces tecum, together with the attorney's certificate of service pursuant to Rule 1:12, shall be mailed or delivered to the adverse party and to the clerk's office of the court in which the case is pending on the day of issuance by the attorney. The law governing subpoenas duces tecum issued pursuant to Rule 3A:12(b) shall apply. A sheriff shall not be required to serve an attorney-issued subpoena duces tecum that is not issued at least five business days prior to the date production of evidence is desired. When an attorney transmits one or more subpoenas duces tecum to a sheriff to be served in his jurisdiction, the provisions in § 8.01-407 regarding such transmittals shall apply.

If the time for compliance with a subpoena duces tecum issued by an attorney is less than 14 days after service of the subpoena, the person to whom it is directed may serve upon the party issuing the subpoena a written objection setting forth any grounds upon which such production, inspection, or testing should not be required. If objection is made, the party on whose behalf the subpoena duces tecum was issued and served shall not be entitled to the requested production, inspection, or testing, except pursuant to an order of the court, but may, upon notice to the person to whom the subpoena was directed, move for an order to compel production, inspection, or testing. Upon such timely motion, the court may quash, modify, or sustain the subpoena duces tecum.

Subpoenas duces tecum for medical records issued by an attorney shall be subject to the provisions of §§ 8.01-413 and 32.1-127.1:03, except that no separate fee for issuance shall be imposed.