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HOUSE BILL NO. 1165

Offered January 14, 2022

A BILL to amend and reenact § 19.2-218 of the Code of Virginia, relating to nolle prosequi or dismissal without prejudice prior to preliminary hearing; subsequent indictment; depositions.

Patrons—Clark, Scott, D.L., Hope and Price

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-218 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-218. Preliminary hearing required for person arrested on charge of felony; waiver; nolle prosequi or dismissal without prejudice prior to preliminary hearing; subsequent indictment; remand or depositions.

A. No person who is arrested on a charge of felony shall be denied a preliminary hearing upon the question of whether there is reasonable ground to believe that he committed the offense, and no indictment shall be returned in a court of record against any such person prior to such hearing unless such hearing is waived in writing by the accused.

B. If the district court enters a nolle prosequi or grants a dismissal without prejudice upon motion of the attorney for the Commonwealth on a misdemeanor or felony warrant prior to conducting a preliminary hearing and the defendant is subsequently indicted by a grand jury for the same offense, then (i) on the defendant's motion, the case shall be remanded to the district court for a preliminary hearing or (ii) the court may, with the consent of the defendant, direct that the depositions of any witnesses whose testimony would have been relevant in determining probable cause be taken. Such depositions shall be taken before a judge of the circuit court in which such indictments were returned, and the judge shall rule upon all questions of evidence and otherwise control the taking of the same as though it were taken in open court. At the taking of such deposition, the attorney for the Commonwealth, as well as the accused and his attorneys, shall be present and they shall have the same rights in regard to the examination of such witness as if he were testifying in open court.

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