

LD3705661

## SENATE BILL NO. 7

Offered January 12, 1994

Prefiled January 6, 1994

*A BILL to amend and reenact §§ 17-116.07 and 19.2-398 of the Code of Virginia, relating to appeals by the Commonwealth in criminal cases.*

Patron—Gartlan

Referred to the Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That §§ 17-116.07 and 19.2-398 of the Code of Virginia are amended and reenacted as follows:**

§ 17-116.07. Disposition of appeals; finality of decisions.

A. Each appeal of right taken to the Court of Appeals and each appeal for which a petition for appeal has been granted shall be considered by a panel of the court.

When the Court of Appeals has (i) rejected a petition for appeal, (ii) dismissed an appeal in any case in accordance with the Rules of Court, or (iii) decided an appeal, its decision shall be final, without appeal to the Supreme Court, in:

1. Traffic infraction and misdemeanor cases where no incarceration is imposed;

2. Cases originating before any administrative agency or the Virginia Workers' Compensation Commission;

3. Cases involving the affirmance or annulment of a marriage, divorce, custody, spousal or child support or the control or disposition of a juvenile and other domestic relations cases arising under Title 16.1 or Title 20, or involving adoption under Chapter 11 (§ 63.1-220 et seq.) of Title 63.1; and

4. Appeals in criminal cases pursuant to §§ 19.2-398 and 19.2-401. Such finality of the Court of Appeals' decision shall not preclude a defendant, if he is convicted, from requesting the Court of Appeals or Supreme Court on direct appeal to reconsider an issue which was the subject of the pretrial appeal; and

5. Appeals involving involuntary treatment of prisoners pursuant to § 53.1-40.1.

B. Notwithstanding the provisions of subsection A, in any case ~~other than an appeal pursuant to § 19.2-398~~, in which the Supreme Court determines on a petition for review that the decision of the Court of Appeals involves a substantial constitutional question as a determinative issue or matters of significant precedential value, review may be had in the Supreme Court in accordance with the provisions of § 17-116.08.

§ 19.2-398. When appeal by the Commonwealth in felony actions allowed.

A. A petition for appeal from a circuit court may be taken by the Commonwealth only in felony cases, before a jury is impaneled and sworn in a jury trial, or before the court begins to hear or receive evidence or the first witness is sworn, whichever occurs first, in a nonjury trial. The appeal may be taken from:

1. An order of a circuit court dismissing a warrant, information or indictment, or any count or charge thereof on the ground that a statute upon which it was based is unconstitutional; or

2. An order of a circuit court prohibiting the use of certain evidence at trial on the grounds such evidence was obtained in violation of the provisions of the Fourth, Fifth or Sixth Amendments to the Constitution of the United States or Article I, Sections 8, 10 or 11 of the Constitution of Virginia prohibiting illegal searches and seizures and protecting rights against self-incrimination, provided the Commonwealth certifies the evidence is essential to the prosecution.

B. A petition for appeal from the Court of Appeals to the Supreme Court may be taken by the Commonwealth in any case which was appealed to the Court of Appeals pursuant to subsection A.

C. Nothing in this chapter shall affect the Commonwealth's right to appeal in civil matters or cases involving a violation of law relating to the state revenue.

INTRODUCED

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