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## HOUSE BILL NO. 969

Offered January 22, 1996

A BILL to amend and reenact § 19.2-265.4 of the Code of Virginia, relating to failure to provide discovery.

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Patron—Robinson

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 19.2-265.4 of the Code of Virginia is amended and reenacted as follows:**

§ 19.2-265.4. Failure to provide discovery.

A. In any criminal prosecution for a felony ~~in a circuit court~~ or for a misdemeanor brought on direct indictment, the attorney for the Commonwealth shall have a duty to adequately and fully provide discovery as provided under Rule 3A:11 of the Rules of the Supreme Court. Rule 3A:11 shall be construed to apply to such felony and misdemeanor prosecutions. This duty to disclose shall be continuing and shall apply to any additional evidence or material discovered by the Commonwealth prior to or during trial which is subject to discovery or inspection and has been previously requested by the accused. *Additionally, the accused shall be entitled to the following:*

1. *Disclosure of any and all statements of an accused including, but not limited to, all statements obtained as a part of the investigation, his statements to co-defendants who are cooperating with the Commonwealth, or otherwise;*

2. *Disclosure of any and all exculpatory evidence, including evidence which can be used to impeach prosecution witnesses, which is known to, or in the possession, custody, or control of, the Commonwealth;*

3. *Disclosure of written statements of a prosecution witness (i) authored, adopted, or ratified by such witness who testifies at a pretrial hearing or at trial and (ii) which are in the possession, custody, or control of the Commonwealth;*

4. *The right to review, inspect and use, for purposes of cross-examination, any documents or items, whether police reports, notes or other documents, which a witness has used to refresh his recollection during testimony under oath or immediately prior to testimony under oath; and*

5. *The right to in-camera review by the court of any discovery item or matter in dispute for a determination of the accused's right to discovery, including the right to preserve for the record any item that the Commonwealth does not produce.*

B. If at any time during the course of the proceedings it is brought to the attention of the court that the attorney for the Commonwealth has failed to comply with this section, the court may order the Commonwealth to permit the discovery or inspection, grant a continuance, or prohibit the Commonwealth from introducing evidence not disclosed, or the court may enter such other order as it deems just under the circumstances.

INTRODUCED

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