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SENATE BILL NO. 373

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 11, 1996)

(Patron Prior to Substitute—Senator Barry)

A BILL to amend and reenact §§ 19.2-217 and 19.2-218 of the Code of Virginia, relating to felony prosecutions; preliminary hearings; grand jury.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-217 and 19.2-218 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-217. When information filed; prosecution for felony to be by indictment or presentment; waiver; process to compel appearance of accused.

An information may be filed by the attorney for the Commonwealth based upon a complaint in writing verified by the oath of a competent witness; ~~but~~ . *However*, no person shall be put upon trial for any felony, unless (i) *probable cause to believe that the person committed a felony was found at a preliminary hearing or* (ii) an indictment or presentment ~~shall have~~ *has* first been found or made by a grand jury in a court of competent jurisdiction or ~~unless~~ (iii) such person *has waived indictment and preliminary hearing*, by writing signed by ~~such person~~ *him* before the court having jurisdiction to try ~~such the~~ *the* felony or *conduct the preliminary hearing*, or before the judge of such court ~~shall have waived such indictment or presentment~~, in which event he may be tried on a warrant or information. *Upon the occurrence of (i), (ii) or (iii), the case shall be tried in circuit court.* If the accused ~~he~~ *is* in custody, or has been recognized or summoned to answer such information, presentment or indictment, no other process shall be necessary; ~~but~~ . *However*, the court may, in its discretion, issue process to compel the appearance of the accused.

§ 19.2-218. Preliminary hearing required for person arrested on charge of felony; waiver.

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~~ *probable cause* to believe that he committed the offense and no indictment shall be returned in a *circuit court of record* against ~~any such the~~ person prior to such hearing unless such *preliminary hearing* is waived in writing by the accused. *However, if probable cause is not found at a preliminary hearing, an indictment or presentment may subsequently be returned.*