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SENATE BILL NO. 994

Offered January 17, 1997

A BILL to amend and reenact § 19.2-262 of the Code of Virginia, as it is currently effective and as it may become effective, and § 19.2-262.1 of the Code of Virginia, relating to joint trials.

Patrons—Stolle, Earley, Edwards, Norment, Quayle, Saslaw and Williams; Delegates: Bryant, Drake, Dudley, Katzen, McClure, McDonnell, Purkey, Ruff, Tata and Wardrup

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-262 of the Code of Virginia, as it is currently effective and as it may become effective, and § 19.2-262.1 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-262. Waiver of jury trial; numbers of jurors in criminal cases; how jurors selected from panel.

(1) In any criminal case in which trial by jury is dispensed with as provided by law, the whole matter of law and fact shall be heard and judgment given by the court. In appeals from juvenile and domestic relations district courts the infant, through his guardian ad litem or counsel, may waive a jury.

(2) Twelve persons from a panel of twenty shall constitute a jury in a felony case. Seven persons from a panel of thirteen shall constitute a jury in a misdemeanor case.

(3) The parties or their counsel, beginning with the attorney for the Commonwealth, shall alternately strike off one name from the panel until the number remaining shall be reduced to the number required for a jury.

(4) In any case in which persons indicted for felony ~~elect~~ *are* to be tried jointly, if counsel or the accused are unable to agree on the full number to be stricken, or, if for any other reason counsel or the accused fail or refuse to strike off the full number of jurors allowed such party, the clerk shall place in a box ballots bearing the names of the jurors whose names have not been stricken and shall cause to be drawn from the box such number of ballots as may be necessary to complete the number of strikes allowed the party or parties failing or refusing to strike. Thereafter, if the opposing side is entitled to further strikes, they shall be made in the usual manner.

§ 19.2-262. (Delayed effective date) Waiver of jury trial; numbers of jurors in criminal cases; how jurors selected from panel.

(1) In any criminal case in which trial by jury is dispensed with as provided by law, the whole matter of law and fact shall be heard and judgment given by the court. In appeals from family courts the infant, through his guardian ad litem or counsel, may waive a jury.

(2) Twelve persons from a panel of twenty shall constitute a jury in a felony case. Seven persons from a panel of thirteen shall constitute a jury in a misdemeanor case.

(3) The parties or their counsel, beginning with the attorney for the Commonwealth, shall alternately strike off one name from the panel until the number remaining shall be reduced to the number required for a jury.

(4) In any case in which persons indicted for felony ~~elect~~ *are* to be tried jointly, if counsel or the accused are unable to agree on the full number to be stricken, or, if for any other reason counsel or the accused fail or refuse to strike off the full number of jurors allowed such party, the clerk shall place in a box ballots bearing the names of the jurors whose names have not been stricken and shall cause to be drawn from the box such number of ballots as may be necessary to complete the number of strikes allowed the party or parties failing or refusing to strike. Thereafter, if the opposing side is entitled to further strikes, they shall be made in the usual manner.

§ 19.2-262.1. Joinder of defendants.

On motion of the Commonwealth, ~~for good cause shown~~, the court, ~~in its discretion~~, ~~may shall~~ order persons charged with participating in (i) a conspiracy or (ii) contemporaneous and related acts or occurrences or in a series of acts or occurrences constituting an offense or offenses, to be tried jointly unless such joint trial would constitute prejudice to a defendant ~~the defendant establishes that prejudice would result from a joint trial~~. If the court finds that a joint trial would constitute prejudice to a defendant, the court shall order severance as to that defendant or provide such other relief justice requires. For purpose of this section "prejudice" means that there is a serious risk that a specific trial right of the defense would be compromised or the jury would be prevented from making a reliable judgment about guilt or innocence. Prejudice shall not be established by a mere showing that a separate trial would offer a better chance of acquittal.

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