

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 251

An Act to amend and reenact § 19.2-398 of the Code of Virginia, relating to appeal by the Commonwealth.

[H 290]

Approved April 7, 1998

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-398 of the Code of Virginia is amended and reenacted as follows:

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

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~~ *Section* 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.

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 *or appeals pursuant to § 17-116.08 or subsection C of § 19.2-317.*