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## HOUSE BILL NO. 1039

Offered January 26, 1998

*A BILL to amend and reenact § 19.2-240, as it is currently effective and as it may become effective, and § 19.2-241 of the Code of Virginia, relating to scheduling of criminal trials.*

Patron—Joannou

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 19.2-240, as it is currently effective and as it may become effective, and § 19.2-241 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-240. Clerks shall make out criminal docket.

Before every term of any court in which criminal cases are to be tried the clerk of the court shall make out a separate docket of criminal cases then pending, in the following order, numbering the same:

1. Felony cases;
2. Misdemeanor cases.

*He Subject to the provisions of § 19.2-241, he shall docket all felony cases in the order in which the indictments are found and all misdemeanor cases in the order in which the presentments or indictments are found or informations are filed or appeals are allowed by magistrates and as soon as any presentments or indictments are made at a term of court he shall forthwith docket the same in the order required above.*

Traffic infractions shall be docketed with misdemeanor cases.

Cases appealed from the juvenile and domestic relations district court shall not be placed on the criminal docket except for cases involving criminal offenses committed by adults as provided in § 16.1-302. Cases transferred to a circuit court from a juvenile and domestic relations district court pursuant to Article 7 (§ 16.1-269.1 et seq.) of Chapter 11 of Title 16.1 shall be docketed as provided in this section upon return of a true bill of indictment by the grand jury.

§ 19.2-240. (Delayed effective date) Clerks shall make out criminal docket.

Before every term of any court in which criminal cases are to be tried the clerk of the court shall make out a separate docket of criminal cases then pending, in the following order, numbering the same:

1. Felony cases;
2. Misdemeanor cases.

*He Subject to the provisions of § 19.2-241, he shall docket all felony cases in the order in which the indictments are found and all misdemeanor cases in the order in which the presentments or indictments are found or informations are filed or appeals are allowed by magistrates and as soon as any presentments or indictments are made at a term of court he shall forthwith docket the same in the order required above.*

Traffic infractions shall be docketed with misdemeanor cases. Cases appealed from the family court shall not be placed on the criminal docket except for cases involving criminal offenses committed by adults as provided in § 16.1-302. Cases transferred to a circuit court from a family court pursuant to Article 7 (§ 16.1-269.1 et seq.) of Chapter 11 of Title 16.1 shall be docketed as provided in this section upon return of a true bill of indictment by the grand jury.

§ 19.2-241. Time within which court to set criminal cases for trial.

A. The judge of each circuit court shall fix a day of his court when the trial of criminal cases will commence, and may make such general or special order in reference thereto, and to the summoning of witnesses, as may seem proper, but all criminal cases shall be disposed of before civil cases, unless the court shall direct otherwise.

B. *In any felony case in which a plea of not guilty is entered, the trial shall commence within 120 days of the date the information or indictment was returned or, if later, the date the defendant appeared before a judicial officer of the court. Unless the defendant consents in writing to the contrary, the trial shall not commence less than forty-five days from the date on which the defendant first appeared through counsel or expressly waived counsel.*

Any period of delay resulting from the following shall be excluded in computing the time within which the trial shall be held:

1. Other proceedings concerning the defendant, including, but not limited to, proceedings to determine mental competency or physical capacity or any other examination of the defendant, trial of other charges, interlocutory appeals, pretrial motions, transfer of a case or removal of a defendant, delay resulting from transportation of any defendant, consideration of a proposed plea agreement and

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60 *delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding*  
61 *concerning the defendant is actually under advisement by the court.*

62 *2. Deferral of prosecution by the attorney for the Commonwealth pursuant to a written agreement*  
63 *with the defendant, with the approval of the court.*

64 *3. Absence or unavailability of the defendant or an essential witness, as when his whereabouts are*  
65 *unknown and he is attempting to avoid apprehension or prosecution or his whereabouts cannot be*  
66 *determined by due diligence or when his whereabouts are known but his presence for trial cannot be*  
67 *obtained by due diligence or he resists appearing at or being returned for trial.*

68 *4. The defendant's mental incompetence or physical inability to stand trial.*

69 *5. Dismissal of the information or indictment upon motion of the attorney for the Commonwealth and*  
70 *if the charge is thereafter filed against the defendant for the same offense or any offense required to be*  
71 *joined with that offense, limited to delay during the time between the date the charge was dismissed to*  
72 *the date the time limitation would begin to run as to the subsequent charge had there been no previous*  
73 *charge.*

74 *6. Joinder of the defendant for trial with a co-defendant as to whom the time for trial has not run if*  
75 *a motion for severance is not granted.*

76 *7. Continuance granted upon motion of the court, the defendant or the attorney for the*  
77 *Commonwealth in furtherance of the ends of justice.*

78 *C. When an indictment is found against a person for felony or when an appeal has been perfected*  
79 *from the conviction of a misdemeanor or traffic infraction, the accused, if in custody, or if he appear*  
80 *according to his recognizance, may be tried at the same term and shall be tried within the time limits*  
81 *fixed in § 19.2-243; provided that no trial shall be held on the first day of the term unless it be with*  
82 *consent of the attorney for the Commonwealth and the accused and his attorney.*