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**HOUSE BILL NO. 99**

Offered January 11, 2006

Prefiled December 21, 2005

*A BILL to amend and reenact §§ 16.1-134, 16.1-136, 19.2-398, and 19.2-400 of the Code of Virginia, relating to appeal from a district court decision holding a criminal statute unconstitutional.*

Patrons—Cosgrove, Athey, Callahan, Gilbert, Landes, Lingamfelter, Marshall, D.W., O'Bannon, Rust, Suit and Welch

Referred to Committee for Courts of Justice

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

**1. That §§ 16.1-134, 16.1-136, 19.2-398, and 19.2-400 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-134. Appeal by Commonwealth in revenue cases and in cases dismissed on the basis of unconstitutionality.

A. In any case *tried in a court not of record under this title:*

1. ~~involving~~ Involving the violation of a law relating to the state revenue or  
2. *In which the court dismisses a criminal warrant, information, summons, or count or charge thereof on the ground that the statute upon which it was based is unconstitutional* ~~tried in a court not of record under this title~~, the Commonwealth shall also have the right of appeal at any time within ten days from final judgment to appeal to the circuit court.

B. *The court shall enter its findings in a written order in every case in which it dismisses a criminal warrant, information, summons, or count or charge thereof on the ground that the statute upon which it was based is unconstitutional. The appeal of such matter shall lie directly to the Court of Appeals in accordance with the provisions of § 19.2-398.*

§ 16.1-136. How appeal tried.

Any appeal taken under the provisions of this chapter *except pursuant to subdivision A 2 of § 16.1-134* shall be heard de novo in the ~~appellate~~ circuit court and shall be tried without formal pleadings in writing; and, except in the case of an appeal from any order or judgment of a court not of record forfeiting any recognizance or revoking any suspension of sentence, the accused shall be entitled to trial by a jury in the same manner as if he had been indicted for the offense in the circuit court.

§ 19.2-398. When appeal by the Commonwealth allowed.

A. In a felony case a pretrial appeal from a circuit court may be taken by the Commonwealth from:

1. An order of a circuit court dismissing a warrant, information or indictment, or any count or charge thereof on the ground that (i) the defendant was deprived of a speedy trial in violation of the provisions of the Sixth Amendment to the Constitution of the United States, Article I, Section 8 of the Constitution of Virginia, or § 19.2-243; (ii) the defendant would be twice placed in jeopardy in violation of the provisions of the Fifth Amendment to the Constitution of the United States or Article I, Section 8 of the Constitution of Virginia; or (iii) 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, 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 that the appeal is not taken for purpose of delay and that the evidence is substantial proof of a fact material in the proceeding.

B. A petition for appeal may be taken by the Commonwealth in a felony case from any order of release on conditions pursuant to Article 1 (§ 19.2-119 et seq.) of Chapter 9 of this title.

C. A petition for appeal may be taken by the Commonwealth in a felony case after conviction where the sentence imposed by the circuit court is contrary to mandatory sentencing or restitution terms required by statute.

D. 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 § 17.1-411 or subsection C of § 19.2-317.

E. *A petition for appeal may be taken by the Commonwealth pursuant to an order of a district court in which the court dismisses a criminal warrant, information, summons, or count or charge thereof on the ground that the statute upon which it was based is unconstitutional.*

§ 19.2-400. Appeal from district court and from circuit court; time for filing notice.

An appeal taken pursuant to § 19.2-398, including such an appeal in a capital murder case, shall lie

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58 to the Court of Appeals of Virginia.

59 No appeal shall be allowed the Commonwealth pursuant to subsection A of § 19.2-398 unless within  
60 seven days after entry of the order of the circuit court from which the appeal is taken, and before a jury  
61 is impaneled and sworn if there is to be trial by jury or, in cases to be tried without a jury, before the  
62 court begins to hear or receive evidence or the first witness is sworn, whichever occurs first, the  
63 Commonwealth files a notice of appeal with the clerk of the trial court. If the appeal relates to  
64 suppressed evidence, the attorney for the Commonwealth shall certify in the notice of appeal that the  
65 appeal is not taken for the purpose of delay and that the evidence is substantial proof of a fact material  
66 to the proceeding. All other requirements related to the notice of appeal shall be governed by Part Five  
67 A of the Rules of the Supreme Court. Upon the filing of a timely notice of appeal, the order from  
68 which the pretrial appeal is taken and further trial proceedings in the circuit court, except for a bail  
69 hearing, shall thereby be suspended pending disposition of the appeal.

70 An appeal by the Commonwealth pursuant to subsection C of § 19.2-398 shall be governed by Part  
71 Five A of the Rules of the Supreme Court.