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SENATE BILL NO. 444

Offered January 13, 2010

Prefiled January 13, 2010

A *BILL to amend and reenact § 19.2-386.24 of the Code of Virginia, relating to destruction of seized marijuana plants.*

Patron—Reynolds

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-386.24 of the Code of Virginia is amended and reenacted as follows:**

§ 19.2-386.24. Destruction of seized controlled substances or marijuana prior to trial.

A. Where seizures of controlled substances, or *bulk or packaged* marijuana, are made in excess of 10 pounds in connection with any prosecution or investigation under Chapter 7 (§ 18.2-247 et seq.) of Title 18.2, the appropriate law-enforcement agency may retain 10 pounds of the substance randomly selected from the seized substance for representative purposes as evidence and destroy the remainder of the seized substance.

Before any destruction is carried out under this section, the law-enforcement agency shall cause the material seized to be photographed with identification case numbers or other means of identification and shall prepare a report identifying the seized material. It shall also notify the accused, or other interested party, if known, or his attorney, at least five days in advance that the photography will take place and that they may be present. Prior to any destruction under this section, the law-enforcement agency shall also notify the accused or other interested party, if known, and his attorney at least seven days prior to the destruction of the time and place the destruction will occur. Any notice required under the provisions of this section shall be by first-class mail to the last known address of the person required to be notified. ~~In addition to the substance retained for representative purposes as evidence, all photographs and records made under this section and properly identified shall be admissible in any court proceeding for any purposes for which the seized substance itself would have been admissible.~~

B. Where a seizure of more than 10 suspected live marijuana plants is made in connection with any prosecution or investigation under Chapter 7 (§ 18.2-247 et seq.) of Title 18.2, the appropriate law-enforcement agency may retain 10 of the seized plants and destroy the remainder by direction of the chief law-enforcement officer of the agency or his designee, without a court order, subject to the following requirements:

1. The chief law-enforcement officer of the agency or his designee shall have determined that it is not reasonably possible to preserve all of the plants in place or to remove the plants to another location because of the difficulty associated with transporting and storing the suspected marijuana plants;

2. Random and representative samples of the plants to be destroyed, which may include stalks, branches, leaves and buds, shall be taken, and representative samples shall be retained for evidentiary purposes; and

3. Photographs or video recordings shall be taken prior to any destruction of plants to record the total amount of the suspected marijuana plants seized.

Subsequent to any destruction of suspected marijuana plants pursuant to this section, an affidavit shall be filed within 30 days in the court that has jurisdiction over any pending criminal proceedings pertaining to the plants, reciting the applicable information required by subdivisions 1, 2, and 3 together with information establishing the location of the suspected marijuana plants, and specifying the date and time of the destruction. If there are no criminal proceedings pending, the affidavit may be filed in any court within the locality that would have jurisdiction over a person against whom those criminal charges might be filed.

C. In addition to the substance or plant material retained for representative purposes as evidence, all photographs, video recordings and records made under this section and properly identified shall be admissible in any court proceeding for any purposes for which the seized substance itself would have been admissible.

INTRODUCED

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