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SENATE BILL NO. 489

Offered January 13, 2010

Prefiled January 13, 2010

A *BILL to amend and reenact §§ 16.1-277.1, 17.1-406 and 17.1-413 of the Code of Virginia and to amend the Code of Virginia by adding in Article 8 of Chapter 11 of Title 16.1 a section numbered 16.1-277.2, relating to juvenile criminal cases; interlocutory appeals by Commonwealth.*

Patron—Hurt

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-277.1, 17.1-406 and 17.1-413 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 8 of Chapter 11 of Title 16.1 a section numbered 16.1-277.2 as follows:

§ 16.1-277.1. Time limitation.

A. When a child is held continuously in secure detention, he shall be released from confinement if there is no adjudicatory or transfer hearing conducted by the court for the matters upon which he was detained within twenty-one days from the date he was first detained.

B. If a child is not held in secure detention or is released from same after having been confined, an adjudicatory or transfer hearing on the matters charged in the petition or petitions issued against him shall be conducted within 120 days from the date the petition or petitions are filed.

C. When a child is held in secure detention after the completion of his adjudicatory hearing or is detained when the juvenile court has retained jurisdiction as a result of a transfer hearing, he shall be released from such detention if the disposition hearing is not completed within thirty days from the date of the adjudicatory or transfer hearing.

D. The time limitations provided for in this section shall be tolled during any period in which (i) the whereabouts of the child are unknown, (ii) the child has escaped from custody, or (iii) the child has failed to appear pursuant to a court order, or (iv) the Commonwealth has appealed a ruling pursuant to § 16.1-277.2. The limitations also may be extended by the court for a reasonable period of time based upon good cause shown, provided that the basis for such extension is recorded in writing and filed among the papers of the proceedings. For the purposes of this section, good cause includes, but is not limited to, extension of limitations necessary to obtain the presence of a witness to testify regarding the results of scientific analyses or examinations.

§ 16.2-277.2. Commonwealth's appeals.

A. In any trial of, preliminary hearing for, or transfer hearing for an offense that would be a felony if committed by an adult in a juvenile and domestic relations district court, motions or objections seeking suppression of evidence 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 shall be raised by motion or objection filed in writing in the court and notice given to opposing counsel not later than seven days before trial or hearing. The juvenile court may, however, for good cause shown and in the interest of justice, permit the motions or objections to be raised at a later time.

B. If in any case involving an offense that would be a felony if committed by an adult, a juvenile court rules that 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, it shall upon motion of the Commonwealth, stay the proceedings and issue a written statement of law and relevant facts, if any, in support of its ruling and shall transmit the case, together with all papers, documents, and evidence connected therewith, to the circuit court for a de novo hearing and ruling on whether such evidence was obtained in violation of those provisions. The circuit court shall give such hearing priority on its docket. If the circuit court rules that evidence was obtained in violation of those provisions, the Commonwealth may appeal such interlocutory order to the Court of Appeals pursuant to the provisions of Chapter 25 (§ 19.2-398 et seq.) of Title 19.2; however, if the circuit court rules that evidence was not obtained in violation of those provisions, the circuit court shall forthwith remand the case to the juvenile court for trial, preliminary hearing, or transfer hearing consistent with the ruling of the circuit court.

C. Upon the entry of any order of the juvenile court prohibiting the use of certain evidence on the

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SB489

59 grounds such evidence was obtained in violation of the provisions of the Fourth, Fifth or Sixth
60 Amendments to the Constitution of the United States or Article I, Section 8, 10 or 11 of the Constitution
61 of Virginia prohibiting illegal searches and seizures and protecting rights against self-incrimination
62 pursuant to this section, if the juvenile moves the court for release from detention, the juvenile court
63 shall review the juvenile's detention status pending appeal to a circuit court. The burden shall be on the
64 Commonwealth to show good cause why the juvenile should be held pursuant to the provisions of
65 § 16.1-248.1.

66 D. Upon the reversal of a juvenile court's order by a circuit court, the Commonwealth may move the
67 circuit court for a detention status review, and the circuit court shall entertain the motion. The
68 Commonwealth shall carry no burden to show good cause why the juvenile should not be placed in
69 detention pursuant to § 16.1-248.1.

70 § 17.1-406. Petitions for appeal; cases over which Court of Appeals does not have jurisdiction.

71 A. Any aggrieved party may present a petition for appeal to the Court of Appeals from (i) any final
72 conviction in a circuit court of a traffic infraction or a crime, except where a sentence of death has been
73 imposed, (ii) any final decision of a circuit court on an application for a concealed weapons permit
74 pursuant to subsection D of § 18.2-308, (iii) any final order of a circuit court involving involuntary
75 treatment of prisoners pursuant to § 53.1-40.1, or (iv) any final order for declaratory or injunctive relief
76 under § 57-2.02. The Commonwealth or any county, city or town may petition the Court of Appeals for
77 an appeal pursuant to this subsection in any case in which such party previously could have petitioned
78 the Supreme Court for a writ of error under § 19.2-317. The Commonwealth may also petition the Court
79 of Appeals for an appeal in a criminal case pursuant to § 16.1-277.2 or 19.2-398.

80 B. In accordance with other applicable provisions of law, appeals lie directly to the Supreme Court
81 from a conviction in which a sentence of death is imposed, from a final decision, judgment or order of
82 a circuit court involving a petition for a writ of habeas corpus, from any final finding, decision, order,
83 or judgment of the State Corporation Commission, and from proceedings under §§ 54.1-3935 and
84 54.1-3937. Complaints of the Judicial Inquiry and Review Commission shall be filed with the Supreme
85 Court of Virginia. The Court of Appeals shall not have jurisdiction over any cases or proceedings
86 described in this subsection.

87 § 17.1-413. Opinions; reporting, printing and electronic publication.

88 A. The Court of Appeals shall state in writing the reasons for its decision (i) rejecting a petition for
89 appeal or (ii) deciding a case after hearing. Subject to rules promulgated under § 17.1-403 the Court in
90 its discretion may render its decision by order or memorandum opinion. All orders and opinions of the
91 Court of Appeals shall be preserved with the record of the case. Opinions designated by the Court of
92 Appeals as having precedential value or as otherwise having significance for the law or legal system
93 shall be expeditiously reported in separate Court of Appeals Reports in the same manner as the
94 decisions and opinions of the Supreme Court. The clerk of the Court of Appeals shall retain in the
95 clerk's office a list and brief summary of the case for all unpublished decisions and opinions of the
96 Court of Appeals. The list of cases and summary shall be made available to any person upon request.

97 B. The Executive Secretary of the Supreme Court shall contract for the printing of the reports of the
98 Supreme Court and the Court of Appeals and for the advance sheets of each court. He shall select a
99 printer for the reports and prescribe such contract terms as will ensure issuance of the reports as soon as
100 practicable after a sufficient number of opinions are filed. He shall make such contracts after
101 consultation with the Department of General Services and shall distribute these reports in accordance
102 with the applicable provisions of law. He shall also provide for the electronic publication on the Internet
103 of the opinions of the Supreme Court and Court of Appeals subject to conditions and restrictions
104 established by each court regarding the electronic publication of its opinions.

105 C. In an appeal taken pursuant to § 16.1-277.2, no written decision shall contain the first or last
106 name of the juvenile.