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HOUSE BILL NO. 1406

Offered January 12, 2011

Prefiled August 30, 2010

A BILL to amend and reenact §§ 17.1-406 and 19.2-398 of the Code of Virginia, relating to appeal by the Commonwealth from juvenile and domestic relations district court.

Patron—Loupassi

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-406 and 19.2-398 of the Code of Virginia are amended and reenacted as follows:

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

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

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

§ 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; or (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

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 pretrial appeal may be taken in any criminal case from an order of a circuit court dismissing a warrant, information, summons, delinquency petition, or indictment, or any count or charge thereof, on the ground that a statute or local ordinance on which the order is based is unconstitutional.

F. In a delinquency case in which a juvenile is to be tried for an offense that would be a felony if committed by an adult, a pretrial appeal from a juvenile and domestic relations district court may be taken to the Court of Appeals by the Commonwealth from:

1. An order of a juvenile and domestic relations district court dismissing a warrant, information or

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59 indictment, or any count or charge thereof on the ground that (i) the defendant was deprived of a
60 speedy trial in violation of the provisions of the Sixth Amendment to the Constitution of the United
61 States, Article I, Section 8 of the Constitution of Virginia, or § 19.2-243; or (ii) the defendant would be
62 twice placed in jeopardy in violation of the provisions of the Fifth Amendment to the Constitution of the
63 United States or Article I, Section 8 of the Constitution of Virginia; or
64 2. An order of a juvenile and domestic relations district court prohibiting the use of certain evidence
65 at trial on the grounds such evidence was obtained in violation of the provisions of the Fourth, Fifth or
66 Sixth Amendments to the Constitution of the United States or Article I, Section 8, 10 or 11 of the
67 Constitution of Virginia prohibiting illegal searches and seizures and protecting rights against
68 self-incrimination, provided the Commonwealth certifies that the appeal is not taken for purpose of
69 delay and that the evidence is substantial proof of a fact material in the proceeding.