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SENATE BILL NO. 349

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 27, 2014)

(Patron Prior to Substitute—Senator Cosgrove)

A *BILL to amend and reenact § 19.2-386.23 of the Code of Virginia, relating to forfeiture of seized drugs and paraphernalia for training purposes.*

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-386.23 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-386.23. Disposal of seized controlled substances, marijuana, synthetic cannabinoids, and paraphernalia.

A. All controlled substances, imitation controlled substances, marijuana, synthetic cannabinoids as defined in § 18.2-248.1:1, or paraphernalia, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer or have been seized in connection with violations of Chapter 7 (§ 18.2-247 et seq.) of Title 18.2, shall be forfeited and disposed of as follows:

1. Upon written application by (i) the Department of Forensic Science, (ii) *the Department of State Police, or (iii) any police department or sheriff's office in a locality*, the court may order the forfeiture of any such substance or paraphernalia to the Department of Forensic Science, *the Department of State Police, or to such police department or sheriff's office* for research and training purposes and for destruction pursuant to regulations of the United States Department of Justice Drug Enforcement Administration and of the Board of Pharmacy once these purposes have been fulfilled.

2. In the event no application is made under subdivision 1 of this subsection, the court shall order the destruction of all such substances or paraphernalia, which order shall state the existence and nature of the substance or paraphernalia, the quantity thereof, the location where seized, the person or persons from whom the substance or paraphernalia was seized, if known, and the manner whereby such item shall be destroyed. However, the court may order that paraphernalia identified in subdivision 5 of § 18.2-265.1 not be destroyed and that it be given to a person or entity that makes a showing to the court of sufficient need for the property and an ability to put the property to a lawful and publicly beneficial use. A return under oath, reporting the time, place and manner of destruction shall be made to the court and to the Board of Pharmacy by the officer to whom the order is directed. A copy of the order and affidavit shall be made a part of the record of any criminal prosecution in which the substance or paraphernalia was used as evidence and shall, thereafter, be prima facie evidence of its contents. In the event a law-enforcement agency recovers, seizes, finds, is given or otherwise comes into possession of any such substances or paraphernalia that are not evidence in a trial in the Commonwealth, the chief law-enforcement officer of the agency or his designee may, with the written consent of the appropriate attorney for the Commonwealth, order destruction of same; provided that, a statement under oath, reporting a description of the substances and paraphernalia destroyed, and the time, place and manner of destruction, is made to the chief law-enforcement officer and to the Board of Pharmacy by the officer to whom the order is directed.

B. No such substance or paraphernalia used or to be used in a criminal prosecution under Chapter 7 (§ 18.2-247 et seq.) of Title 18.2 shall be disposed of as provided by this section until all rights of appeal have been exhausted, except as provided in § 19.2-386.24.

C. *The amount of any specific controlled substance, or imitation controlled substance, retained by any law-enforcement agency pursuant to a court order issued under this section shall not exceed five pounds, or 25 pounds in the case of marijuana or synthetic cannabinoids as defined in § 18.2-248.1:1. Any written application to the court for controlled substances, imitation controlled substances, marijuana, or synthetic cannabinoids, as defined in § 18.2-248.1:1, shall certify that the amount requested shall not result in the requesting agency's exceeding the limits allowed by this subsection.*

D. A law-enforcement agency that retains any controlled substance, imitation controlled substance, marijuana, or synthetic cannabinoids, as defined in § 18.2-248.1:1, pursuant to a court order issued under this section shall (i) be required to conduct an inventory of such substance on a monthly basis, which shall include a description and weight of the substance, and (ii) destroy such substance within 12 months of obtaining it through a court order for use in training. A written report outlining the details of the inventory shall be made to the chief law-enforcement officer of the agency within 10 days of the completion of the inventory, and the agency shall detail the substances that were used for training pursuant to a court order in the immediately preceding fiscal year. Destruction of such substance shall be certified to the court along with a statement prepared under oath, reporting a description of the substance destroyed, and the time, place, and manner of destruction.