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SENATE BILL NO. 224

Offered January 10, 2018

Prefiled January 3, 2018

A BILL to amend and reenact § 19.2-386.5 of the Code of Virginia, relating to release of seized property; petition to stay release.

Patrons—Petersen; Delegate: LaRock

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-386.5 of the Code of Virginia is amended and reenacted as follows:****§ 19.2-386.5. Release of seized property.**

A. At any time prior to the filing of an information, the attorney for the Commonwealth in the county or city in which the property has been seized pursuant to Chapter 22.2 (§ 19.2-386.15 et seq.) or other provision under the Code may, in his discretion, upon the payment of costs incident to the custody of the seized property, return the seized property to an owner or lien holder, without requiring that the owner or lien holder post bond as provided in § 19.2-386.6, if he believes the property is properly exempt from forfeiture pursuant to § 19.2-386.8.

B. Notwithstanding any other provision of law, any property seized under Chapter 22.2 (§ 19.2-386.15 et seq.) or other provision under this Code shall be released to the owner or lienholder within one year from the date of seizure, unless (i) an information has been filed against that property or (ii) the attorney for the Commonwealth in the county or city in which the seizure occurred files a petition to stay the release of such property. Such petition shall allege that the property seized is an integral part of an investigation and that such property cannot be returned without jeopardizing such investigation. The owner or lienholder may file a response to the petition within 30 days of the filing of such petition. If a response is filed, the Commonwealth must prove by a preponderance of the evidence that the property is an integral part of an investigation and the property cannot be returned without jeopardizing the investigation. If the Commonwealth fails to meet its burden, the court may, in its discretion, award interest and attorney fees in addition to ordering the return of the seized property. If the Commonwealth meets its burden, the court shall stay the release of the property for one year, at which time the property shall be released to the owner or lienholder unless the Commonwealth has complied with clause (i) or (ii) of this subsection.

INTRODUCED

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