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**SENATE BILL NO. 138**

Senate Amendments in [ ] - February 4, 2022

Prefiled January 8, 2022

*A BILL to amend and reenact § 19.2-265.4 of the Code of Virginia, relating to discovery in criminal cases; copies of discovery for the accused.*

Patron Prior to Engrossment—Senator Edwards

Referred to Committee on the Judiciary

**Be it enacted by the General Assembly of Virginia:****1. That § 19.2-265.4 of the Code of Virginia is amended and reenacted as follows:****§ 19.2-265.4. Failure to provide discovery.**

A. In any criminal prosecution for a felony in a circuit court or for a misdemeanor brought on direct indictment, the attorney for the Commonwealth shall have a duty to adequately and fully provide discovery as provided under Rule 3A:11 of the Rules of the Supreme Court. Rule 3A:11 shall be construed to apply to such felony and misdemeanor prosecutions. This duty to disclose shall be continuing and shall apply to any additional evidence or material discovered by the Commonwealth prior to or during trial which is subject to discovery or inspection and has been previously requested by the accused. In any criminal prosecution for a misdemeanor by trial de novo in circuit court, the attorney for the Commonwealth shall have a duty to adequately and fully provide discovery as provided under Rule 7C:5 of the Rules of the Supreme Court. *For any discovery materials or evidence that the accused is permitted to inspect and review, the accused may request the Commonwealth to copy or photograph such discovery materials or evidence, and the Commonwealth shall provide such copies or photographs [ , electronically or otherwise, ] to the accused or his counsel.*

B. If at any time during the course of the proceedings it is brought to the attention of the court that the attorney for the Commonwealth has failed to comply with this section, the court may order the Commonwealth to permit the discovery or inspection, grant a continuance, or prohibit the Commonwealth from introducing evidence not disclosed, or the court may enter such other order as it deems just under the circumstances.

ENGROSSED

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