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SENATE BILL NO. 746

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 14, 2022)

(Patron Prior to Substitute—Senator Surovell)

A *BILL to amend and reenact § 19.2-266.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-268.4, relating to the prohibition of deceptive tactics during the custodial interrogation of a minor.*

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-266.2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-268.4 as follows:

§ 19.2-266.2. Defense objections to be raised before trial; hearing; bill of particulars.

A. Defense motions or objections seeking (i) 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 proscribing illegal searches and seizures and protecting rights against self-incrimination; (ii) dismissal of a warrant, information, or indictment or any count or charge thereof on the ground that: (a) the defendant would be 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 (b) 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 (iii) dismissal of a warrant, information, or indictment or any count or charge thereof on the ground that a statute upon which it was based is unconstitutional; *or (iv) suppression of evidence on the grounds such evidence is inadmissible under the provisions of § 19.2-268.4 shall be raised by motion or objection.*

B. Such a motion or objection in a proceeding in circuit court shall be raised in writing, before trial. The motions or objections shall be filed and notice given to opposing counsel not later than seven days before trial in circuit court or, if made under clause (ii) of subsection A, at such time prior to trial in circuit court as the grounds for the motion or objection shall arise, whichever occurs last. A hearing on all such motions or objections shall be held not later than three days prior to trial in circuit court, unless such period is waived by the accused, as set by the trial judge. The circuit 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.

C. To assist the defense in filing such motions or objections in a timely manner, the circuit court shall, upon motion of the defendant, direct the Commonwealth to file a bill of particulars pursuant to § 19.2-230. The circuit court shall fix the time within which such bill of particulars is to be filed. Upon further motion of the defendant, the circuit court may, upon a showing of good cause, direct the Commonwealth to supplement its bill of particulars. The attorney for the Commonwealth shall certify that the matters stated in the bill of particulars are true and accurate to the best of his knowledge and belief.

D. In a criminal proceeding in district court, any motion or objection as described in subsection A may be raised prior to or at such proceeding. In the event such a motion or objection is raised, the district court shall, upon motion of the Commonwealth grant a continuance for good cause shown.

§ 19.2-268.4. Prohibition of deceptive tactics during the custodial interrogation of a minor.

A. *For purposes of this section:*

"Custodial interrogation" means any interview conducted by a law-enforcement officer associated with an investigatory detention or an arrest during which the law-enforcement officer takes actions or asks questions that are reasonably likely to elicit responses from the person that could incriminate him.

"Deception" means the knowing communication of false facts about evidence or unauthorized statements regarding leniency by a law-enforcement officer to a subject of custodial interrogation.

"Minor" means a person who is younger than 18 years of age.

B. Any communication made by a minor as a result of a custodial interrogation on or after July 1, 2022, shall be presumed to be inadmissible as evidence against such minor making such communication in any adjudication of delinquency or criminal proceeding for an act that if committed by an adult would be a criminal offense if, during the custodial interrogation, a law-enforcement officer knowingly engages in deception.

C. The presumption of inadmissibility for such communication of a minor when such communication is procured through the knowing use of deception during a custodial interrogation may be overcome if the communication was voluntarily given. The Commonwealth shall bear the burden of proving that such a communication was voluntary by a preponderance of the evidence, based on the totality of the circumstances.