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SENATE BILL NO. 1259

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 1, 2023)

(Patron Prior to Substitute—Senator Petersen)

A BILL to amend and reenact §§ 2.2-511, 15.2-1627, 17.1-406, 19.2-402, and 19.2-404 of the Code of Virginia, relating to criminal appeals; duties of the Attorney General and attorney for the Commonwealth.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-511, 15.2-1627, 17.1-406, 19.2-402, and 19.2-404 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-511. Criminal cases.

A. Unless specifically requested by the Governor to do so, the Attorney General shall have no authority to institute or conduct criminal prosecutions in the circuit courts of the Commonwealth except in cases involving (i) violations of the Alcoholic Beverage Control Act (§ 4.1-100 et seq.), (ii) violation of laws relating to elections and the electoral process as provided in § 24.2-104, (iii) violation of laws relating to motor vehicles and their operation, (iv) the handling of funds by a state bureau, institution, commission or department, (v) the theft of state property, (vi) violation of the criminal laws involving child pornography and sexually explicit visual material involving children, (vii) the practice of law without being duly authorized or licensed or the illegal practice of law, (viii) violations of § 3.2-4212 or 58.1-1008.2, (ix) with the concurrence of the local attorney for the Commonwealth, violations of the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.), (x) with the concurrence of the local attorney for the Commonwealth, violations of the Air Pollution Control Law (§ 10.1-1300 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), and the State Water Control Law (§ 62.1-44.2 et seq.), (xi) with the concurrence of the local attorney for the Commonwealth, violations of Chapters 2 (§ 18.2-18 et seq.), 3 (§ 18.2-22 et seq.), and 10 (§ 18.2-434 et seq.) of Title 18.2, if such crimes relate to violations of law listed in clause (x) of this subsection, (xii) with the concurrence of the local attorney for the Commonwealth, criminal violations by Medicaid providers or their employees in the course of doing business, or violations of Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, in which cases the Attorney General may leave the prosecution to the local attorney for the Commonwealth, or he may institute proceedings by information, presentment or indictment, as appropriate, and conduct the same, (xiii) with the concurrence of the local attorney for the Commonwealth, violations of Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2, (xiv) with the concurrence of the local attorney for the Commonwealth, assisting in the prosecution of violations of §§ 18.2-186.3 and 18.2-186.4, (xv) with the concurrence of the local attorney for the Commonwealth, assisting in the prosecution of violations of § 18.2-46.2, 18.2-46.3, or 18.2-46.5 when such violations are committed on the grounds of a state correctional facility, and (xvi) with the concurrence of the local attorney for the Commonwealth, assisting in the prosecution of violations of Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2.

In all other criminal cases in the circuit courts, except where the law provides otherwise, the authority of the Attorney General to appear or participate in the proceedings shall not attach unless and until a notice of appeal has been filed with when the appellate court receives the record after a notice of appeal has been filed with the clerk of the circuit court noting an appeal to the Court of Appeals or the Supreme Court. In all criminal cases before the Court of Appeals or the Supreme Court in which the Commonwealth is a party or is directly interested, the Attorney General shall appear and represent the Commonwealth upon receipt of the record in the appellate court, unless, and with the consent of the Attorney General, the attorney for the Commonwealth who prosecuted the underlying criminal case files a notice of appearance to represent the Commonwealth in any such appeal. However, in an appeal regarding bail, bond, or recognizance pursuant to Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2 or subsection B of § 19.2-398, the attorney for the Commonwealth who prosecuted the underlying criminal case shall continue to represent the Commonwealth on appeal.

B. The Attorney General shall, upon request of a person who was the victim of a crime and subject to such reasonable procedures as the Attorney General may require, ensure that such person is given notice of the filing, of the date, time and place and of the disposition of any appeal or habeas corpus proceeding involving the cases in which such person was a victim. For the purposes of this section, a victim is an individual who has suffered physical, psychological or economic harm as a direct result of the commission of a crime; a spouse, child, parent or legal guardian of a minor or incapacitated victim; or a spouse, child, parent or legal guardian of a victim of a homicide. Nothing in this subsection shall confer upon any person a right to appeal or modify any decision in a criminal, appellate or habeas corpus proceeding; abridge any right guaranteed by law; or create any cause of action for damages

60 against the Commonwealth or any of its political subdivisions, the Attorney General or any of his
61 employees or agents, any other officer, employee or agent of the Commonwealth or any of its political
62 subdivisions, or any officer of the court.

63 **§ 15.2-1627. Duties of attorneys for the Commonwealth and their assistants.**

64 A. No attorney for the Commonwealth, or assistant attorney for the Commonwealth, shall be required
65 to carry out any duties as a part of his office in civil matters of advising the governing body and all
66 boards, departments, agencies, officials and employees of his county or city; of drafting or preparing
67 county or city ordinances; of defending or bringing actions in which the county or city, or any of its
68 boards, departments or agencies, or officials and employees thereof, shall be a party; or in any other
69 manner of advising or representing the county or city, its boards, departments, agencies, officials and
70 employees, except in matters involving the enforcement of the criminal law within the county or city.

71 B. The attorney for the Commonwealth and assistant attorney for the Commonwealth shall be a part
72 of the department of law enforcement of the county or city in which he is elected or appointed, and
73 shall have the duties and powers imposed upon him by general law, including the duty of prosecuting
74 all warrants, indictments or informations charging a felony, and he may in his discretion, prosecute
75 Class 1, 2 and 3 misdemeanors, or any other violation, the conviction of which carries a penalty of
76 confinement in jail, or a fine of \$500 or more, or both such confinement and fine. He shall enforce all
77 forfeitures, and carry out all duties imposed upon him by § 2.2-3126. He may enforce the provisions of
78 § 18.2-268.3, 29.1-738.2, 46.2-341.20:7, or 46.2-341.26:3. He may, in his discretion, file a ~~notice of~~
79 ~~petition for appeal with the circuit court for the appeal of a criminal case for which he was the~~
80 ~~prosecuting attorney pursuant to Chapter 25 (§ 19.2-398 et seq.) of Title 19.2 and he may appear and~~
81 ~~shall continue to represent the Commonwealth in any criminal case on such appeal before the Court of~~
82 ~~Appeals or the Supreme Court for which he was the prosecuting attorney, provided that the Attorney~~
83 ~~General consented to such appearance pursuant to § 2.2-511 unless and until the Court of Appeals~~
84 ~~grants the petition, except that he shall remain counsel of record in an appeal regarding bail, bond, or~~
85 ~~recognizance pursuant to Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2 or subsection B of~~
86 ~~§ 19.2-398.~~

87 He shall also represent the Commonwealth in an appeal of a civil matter related to the enforcement
88 of a criminal law or a criminal case for which he was the prosecuting attorney, including a petition for
89 expungement of a defendant's criminal record, an action of forfeiture filed in accordance with the
90 provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, or any matter which he may enforce
91 pursuant to this section.

92 **§ 17.1-406. Appeals in criminal matters; cases over which Court of Appeals does not have**
93 **jurisdiction.**

94 A. Any aggrieved party may appeal to the Court of Appeals from any final conviction in a circuit
95 court of a traffic infraction or a crime. The Commonwealth or any county, city, or town may petition
96 the Court of Appeals for an appeal pursuant to this subsection in any case in which such party
97 previously could have petitioned the Supreme Court for a writ of error under § 19.2-317. The
98 Commonwealth may also petition the Court of Appeals for an appeal in a criminal case pursuant to
99 § 19.2-398.

100 B. In accordance with other applicable provisions of law, appeals lie directly to the Supreme Court
101 from a final decision, judgment, or order of a circuit court involving a petition for a writ of habeas
102 corpus; *from any action collaterally attacking a criminal conviction, including a motion filed under*
103 *§ 8.01-428; from any final finding, decision, order, or judgment of the State Corporation Commission;*
104 *and from proceedings under §§ 54.1-3935 and 54.1-3937. Complaints of the Judicial Inquiry and Review*
105 *Commission shall be filed with the Supreme Court of Virginia. The Court of Appeals shall not have*
106 *jurisdiction over any cases or proceedings described in this subsection.*

107 **§ 19.2-402. Petition for appeal; brief in opposition; time for filing.**

108 A. When a notice of appeal has been filed pursuant to § 19.2-400, the Commonwealth may petition
109 the Court of Appeals for an appeal pursuant to § 19.2-398. The Commonwealth shall be represented by
110 ~~the Attorney General or the attorney for the Commonwealth prosecuting the case if he filed a notice of~~
111 ~~appearance pursuant to § 2.2-511.~~

112 B. The provisions of this subsection apply only to pretrial appeals. The petition for a pretrial appeal
113 shall be filed with the clerk of the Court of Appeals not more than 14 days after the notice of transcript
114 or written statement of facts required by § 19.2-405 is filed or, if there are objections thereto, within 14
115 days after the judge signs the transcript or written statement of facts. The accused may file a brief in
116 opposition with the clerk of the Court of Appeals within 14 days after the filing of the petition for
117 pretrial appeal. If the accused has filed a notice of cross appeal, he shall file a petition for cross appeal
118 to be consolidated with, and filed within the same time period as, his brief in opposition. The
119 Commonwealth may file a brief in opposition to any petition for cross appeal within 10 days after the
120 petition for cross appeal is filed. Except as specifically provided in this section, all other requirements
121 for the petition for pretrial appeal and brief in opposition shall conform as nearly as practicable to Part

Five A of the Rules of the Supreme Court of Virginia.

§ 19.2-404. Procedures on awarded pretrial appeal.

This section applies only to pretrial appeals. If the Court of Appeals grants the Commonwealth's petition for a pretrial appeal, the Attorney General shall represent the Commonwealth during that appeal unless the attorney for the Commonwealth prosecuting the case has filed a notice of appearance pursuant to § 2.2-511.

The Commonwealth shall file its opening brief in the office of the clerk of the Court of Appeals within 25 days after the date of the certificate awarding the appeal. The brief of the appellee shall be filed in the office of the clerk of the Court of Appeals within 25 days after the filing of the Commonwealth's opening brief. The Commonwealth may then file a reply brief, including its response to any cross appeal, in the office of the clerk of the Court of Appeals within 15 days after the filing of the brief of the accused. With the permission of a judge of the Court of Appeals, the time for filing any brief may be extended for good cause shown. ~~Four copies of each brief shall be filed and three copies shall be mailed or delivered to opposing counsel on or before the date of filing.~~ Except as specifically provided in this section, all other requirements of the brief shall conform as nearly as practicable to Part Five A of the Rules of the Supreme Court of Virginia. The Court of Appeals shall accelerate the appeal on its docket and render its decision not later than 60 days after the filing of the appellee's brief or after the time for filing such brief has expired.

When the opinion is rendered by the Court of Appeals, the mandate shall immediately issue and the clerk of the Court of Appeals shall return the record forthwith to the clerk of the trial court. No petition for rehearing may be filed.