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SENATE BILL NO. 1274

Offered January 8, 2025

Prefiled January 8, 2025

A *BILL to amend the Code of Virginia by adding a section numbered 19.2-268.4, relating to Witness Impeachment Evidence Designation; review process.*

Patrons—Perry, Williams Graves and DeSteph

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

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

§ 19.2-268.4. Witness Impeachment Evidence Designation; review process.

A. For purposes of this section:

"Notice" means written notice given in person or by certified mail or trackable courier service with signature requirement.

"Witness Impeachment Evidence Designation" means a determination or designation that is created by the attorney for the Commonwealth relating to a law-enforcement officer who is believed to have given inconsistent statements or otherwise engaged in conduct that meets the requirements for disclosure in a criminal prosecution according to the Constitution of the United States.

B. No police officer shall be discharged, disciplined, or threatened with discharge or discipline by his employing agency solely due to his designation as a witness with a Witness Impeachment Evidence Designation. This subsection shall not prohibit such agency from dismissing, suspending, demoting, or taking other disciplinary actions against the police officer based on the underlying actions that resulted in such police officer being designated as a witness with a Witness Impeachment Evidence Designation, including any conduct that meets the requirement for disclosure in a criminal prosecution according to the Constitution of the United States.

C. The attorney for the Commonwealth shall, within 10 days of designating a law-enforcement officer as being a witness with a Witness Impeachment Evidence Designation, serve notice upon such law-enforcement officer and upon the agency employing such officer specifying the action taken and remedies available.

D. Any law-enforcement officer designated as a witness with a Witness Impeachment Evidence Designation may, within 14 days of receipt of notice served by the attorney for the Commonwealth, request, by certified mail or trackable courier service with signature requirement, to review the evidence or materials resulting in his designation as a witness with a Witness Impeachment Evidence Designation. Such review shall be granted by the attorney for the Commonwealth within five business days.

Within 21 days of receiving notice of his designation as a witness with a Witness Impeachment Evidence Designation, the law-enforcement officer may object in writing to such designation by serving objections in person or by certified mail or trackable courier service with signature requirement to the attorney for the Commonwealth. Such objections shall state with specificity the grounds on which the objection is raised, which may include (i) the factual dispute as to the reasons for such law-enforcement officer's designation as a witness with a Witness Impeachment Evidence Designation or (ii) the factual dispute over whether such law-enforcement officer's conduct rises to the level of conduct that meets the requirements for disclosure in a criminal prosecution according to the Constitution of the United States. Such objections may include evidence that the law-enforcement officer would like considered and where such evidence may be found. Within five days of receiving such objections, the attorney for the Commonwealth shall issue a response in writing to such law-enforcement officer stating with specificity the grounds on which the law-enforcement officer was designated as a witness with a Witness Impeachment Evidence Designation or indicating that such designation is removed.

E. Within 10 days of receiving a response from the attorney for the Commonwealth as provided in subsection D, a law-enforcement officer designated as a witness with a Witness Impeachment Evidence Designation may file a petition for appeal in the circuit court with jurisdiction in the same manner as provided by law. If the attorney for the Commonwealth files a response, such response shall be filed with the circuit court within five days of receiving notice of such petition. All documents served pursuant to subsections C and D shall be filed with the circuit court by the attorney for the Commonwealth within five days of receiving notice of the petition for appeal. The proceedings shall be confidential, and the record in the case shall be sealed. However, the court may, for good cause shown, unseal the record.

F. The circuit court shall conduct an evidentiary hearing on a petition for appeal filed pursuant to subsection E to determine whether the attorney for the Commonwealth abused his discretion in his designation of the law-enforcement officer as a witness with a Witness Impeachment Evidence Designation.

INTRODUCED

SB1274

59 *All parties shall have the right to counsel. A decision by the circuit court that the attorney for the*
60 *Commonwealth abused his discretion shall result in the immediate removal of the designation of the*
61 *law-enforcement officer as a witness with a Witness Impeachment Evidence Designation. From the decision*
62 *of the court, there shall be no right of further appeal.*
63 **2. That the notice and appeal provisions of § 19.2-268.4 of the Code of Virginia, as created by this act,**
64 **shall apply retroactively to any law-enforcement officer designated as a witness with a Witness**
65 **Impeachment Evidence Designation prior to July 1, 2025.**