

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact § 19.2-265.4 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 15 of Title 19.2 an article numbered 4.3, consisting of a section numbered 19.2-264.15, relating to discovery.

[S 963]

Approved

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-265.4 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 15 of Title 19.2 an article numbered 4.3, consisting of a section numbered 19.2-264.15, as follows:

Article 4.3.

Electronic Discovery.

§ 19.2-264.15. Discovery; electronic means.

A. As used in this section, "electronic means" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities and includes the use of a flash drive, thumb drive, disc drive, PDF transmitted via email, or electronic file sharing.

B. If discovery is requested by counsel of record for the accused, the Commonwealth shall provide such discovery by electronic means unless (i) such counsel of record requests a physical copy or (ii) such material is prohibited from being distributed by law or impossible to provide by electronic means. If such material is impossible to provide by electronic means, the Commonwealth shall provide a physical copy unless such material is prohibited from being distributed by law.

C. In any district court in a case prosecuted by the attorney for the Commonwealth, the attorney for the Commonwealth shall provide to counsel of record for the accused, if requested, a copy of any police report related to the case charged in the manner provided for in subsection B at least 10 days prior to the date the case is set for trial or preliminary hearing, provided that counsel of record agrees to any reasonable redaction or restricted dissemination as requested by the attorney for the Commonwealth.

§ 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~~ that 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, including relevant police reports, criminal records, and body-worn camera footage as described in § 15.2-1723.1. 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.

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