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HOUSE BILL NO. 118
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee for Courts of Justice
on _____)

(Patron Prior to Substitute—Delegate Keys-Gamarra)

A BILL 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; methods of delivery.

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.

Discovery; Methods of Delivery.

§ 19.2-264.15. Discovery; methods of delivery.

A. In any circuit court, if discovery materials, as specified in Rule 3A:11 of the Rules of the Supreme Court, are requested by counsel of record for the accused, the Commonwealth shall provide a copy of such discovery unless such material is prohibited from being distributed by law.

B. 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 relevant police report at least 10 days prior to the date the case is set for trial or preliminary hearing. Any police report provided pursuant to this subsection shall only be provided to counsel of record for the accused and disseminated to any of such counsel's agents or employees or an expert witness. Such report shall not be otherwise disseminated, including the creation of any reproduction or copy, except that the counsel of record for the accused may communicate the contents of such report to the accused. If such materials are requested by counsel of record for the accused for a preliminary hearing held in a district court, the circuit court shall order counsel of record to provide discovery to the attorney for the Commonwealth as provided in Rule 3A:11 of the Rules of the Supreme Court prior to trial of a felony offense in circuit court.

C. 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 the provisions of this section, the court may order the Commonwealth to permit 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.

§ 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. If an order for discovery is submitted for such criminal prosecution pursuant to Rule 3A:11, the accused may request to copy or photograph any discovery materials or evidence that the accused is permitted to inspect and review, including relevant police reports, criminal records, dashboard camera footage, and body-worn camera footage as described in § 15.2-1723.1. Upon such request, the attorney for the Commonwealth shall provide to the counsel of record for the accused such discovery materials, subject to the redaction, restricted dissemination, and protective orders provisions of Rule 3A:11.

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.

HOUSE SUBSTITUTE

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