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HOUSE BILL NO. 150

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on _____)

(Patron Prior to Substitute—Delegate Williams)

A BILL to amend and reenact § 19.2-243 of the Code of Virginia, relating to limitation on prosecution of felony due to lapse of time after finding of probable cause; misdemeanors; exceptions; retaining counsel.

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-243 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-243. Limitation on prosecution of felony due to lapse of time after finding of probable cause; misdemeanors; exceptions.

Where a district court has found that there is probable cause to believe that an adult has committed a felony, the accused, if he is held continuously in custody thereafter, shall be forever discharged from prosecution for such offense if no trial is commenced in the circuit court within five months from the date such probable cause was found by the district court; and if the accused is not held in custody but has been recognized for his appearance in the circuit court to answer for such offense, he shall be forever discharged from prosecution therefor if no trial is commenced in the circuit court within nine months from the date such probable cause was found.

If there was no preliminary hearing in the district court, or if such preliminary hearing was waived by the accused, the commencement of the running of the five-month and nine-month periods, respectively, set forth in this section shall be from the date an indictment or presentment is found against the accused.

If an indictment or presentment is found against the accused but he has not been arrested for the offense charged therein, the five-month and nine-month periods, respectively, shall commence to run from the date of his arrest thereon.

Where a case is before a circuit court on appeal from a conviction of a misdemeanor or traffic infraction in a district court or by certification of a misdemeanor pursuant to § 19.2-190.1, the accused shall be forever discharged from prosecution for such offense if the trial de novo in the circuit court is not commenced (i) within five months from the date of the conviction or certification if the accused has been held continuously in custody or (ii) within nine months of the date of the conviction or certification if the accused has been recognized for his appearance in the circuit court to answer for such offense.

The provisions of this section shall not apply to such period of time as the failure to try the accused was caused:

1. By evaluations or restoration related to his competency or insanity pursuant to Chapter 11 (§ 19.2-167 et seq.) or by reason of his confinement in a hospital for care and observation;

2. By the witnesses for the Commonwealth being enticed or kept away, or prevented from attending by sickness or accident;

3. By the granting of a separate trial at the request of a person indicted jointly with others for a felony;

4. By continuance granted on the motion of the accused or his counsel, or by concurrence of the accused or his counsel in such a motion by the attorney for the Commonwealth, or by the failure of the accused or his counsel to make a timely objection to such a motion by the attorney for the Commonwealth, or by reason of his escaping from jail or failing to appear according to his recognizance;

5. By continuance ordered pursuant to subsection I or J of § 18.2-472.1 or subsection C or D of § 19.2-187.1;

6. By the inability of the jury to agree in their verdict; or

7. By a natural disaster, civil disorder, or act of God; or

8. By continuance granted on the motion of the accused or sua sponte by the court for the accused to retain private counsel or have counsel appointed to him pursuant to § 19.2-159. The trial court shall conduct, no more than 30 days apart, reviews of the accused's attorney status. Tolling of speedy trial pursuant to this subdivision shall end when the accused has either retained counsel or had counsel appointed to him and such counsel has entered an appearance in the case or the accused executes a valid waiver of counsel. Nothing in this subdivision shall be construed as ending the tolling of speedy trial for any other reason pursuant to this section.

But the time during the pendency of any appeal in any appellate court shall not be included as applying to the provisions of this section.

For the purposes of this section, an arrest on an indictment or warrant or information or presentment is deemed to have occurred only when such indictment, warrant, information, or presentment or the summons or capias to answer such process is served or executed upon the accused and a trial is deemed commenced at the point when jeopardy would attach or when a plea of guilty or nolo contendere is tendered by the defendant. The lodging of a detainer or its equivalent shall not constitute an arrest under this section.

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