

SENATE BILL NO. 198
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee for Courts of Justice
on _____)
(Patron Prior to Substitute—Senator Favola)

A BILL to amend the Code of Virginia by adding a section numbered 19.2-271.6:1, relating to admissibility of statements by individuals with developmental or intellectual disabilities in certain cases.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 19.2-271.6:1 as follows:

§ 19.2-271.6:1. Admissibility of statements by individuals with developmental or intellectual disabilities in certain cases; notice to the Commonwealth.

A. In any criminal case, except for a violation of § 18.2-31 or an act of violence as defined in § 19.2-297.1, if the defendant has been diagnosed by a psychiatrist or clinical psychologist with (i) autism spectrum disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association or (ii) a developmental disability or an intellectual disability as those terms are defined in § 37.2-100, any statement made by such defendant to law enforcement during any pretrial interview or prior to appointment of counsel shall be inadmissible in any prosecution against him if the court finds by a preponderance of the evidence that the defendant's decision to speak with law enforcement was directly influenced by his disability.

B. Defense motions or objections seeking suppression of statements made to law enforcement pursuant to this section shall be raised by motion or objection.

1. For a criminal proceeding in a circuit court, such motion or objection shall be raised in writing before trial. Such motion or objection shall be filed and notice given to the attorney for the Commonwealth no later than seven days prior to trial. A hearing on such motion or objection shall be held no later than three days prior to trial, unless such period is waived by the accused, as set by the court. The circuit court may, however, for good cause shown and in the interest of justice, permit the motions or objections to be raised at a later time. The period of any continuance necessary for the scheduling of the hearing pursuant to this section shall not be counted for speedy trial purposes under § 19.2-243.

2. For a criminal proceeding in a district court, any motion or objection may be raised in writing prior to trial. In the event such a motion or objection is raised, the court shall, upon motion of the Commonwealth, grant a continuance for good cause shown.

C. If the defendant's counsel gives notice pursuant to subsection B and intends to introduce expert

testimony pursuant to this section, the defendant shall provide the Commonwealth with (i) any written report of the expert witness setting forth the witness's opinions and the bases and reasons for those opinions, or, if there is no such report, a written summary of the expected expert testimony setting forth the witness's opinions and bases and reasons for those opinions and (ii) the witness's qualifications and contact information. Nothing in this section shall render inadmissible an expert witness's testimony further explaining the opinions, bases, and reasons disclosed pursuant to this section, or the expert witness's qualifications, if such further explanatory language was not included in such notice and disclosure.

D. Any statements made by the defendant at a hearing pursuant to this section or any statement made by the defendant in the course of an examination disclosed pursuant to subsection C shall not be admissible against the defendant over objection in any criminal proceedings following the hearing, except for purposes of impeachment or a criminal proceeding for perjury.

E. For purposes of this section, a defendant's decision to speak with law enforcement shall be presumed to have been directly influenced by his disability where, on a properly administered Diagnostic Adaptive Behavior Scale, Vineland Adaptive Behavior Scale, Adaptive Behavior Assessment System, or other assessment tool approved by the American Association on Intellectual and Developmental Disabilities, the defendant obtains a score at or below the average score obtained by a 14-year-old on the assessment tool's standard measure of adaptive functioning in a domain that would impact a defendant's decision to speak to law enforcement. The assessment tool used shall be administered consistent with guidance published by the American Association on Intellectual and Developmental Disabilities or the published manual for the assessment tool.

F. Nothing in this section shall prevent the Commonwealth from introducing relevant, admissible evidence, including expert testimony, in rebuttal to evidence introduced by the defendant pursuant to this section.