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HOUSE BILL NO. 104

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 7, 2022)

(Patron Prior to Substitute—Delegate Anderson)

*A BILL to amend and reenact § 19.2-243 of the Code of Virginia, relating to prosecution of felony due to lapse of time; judicial emergency; administrative delays.***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 and nine months 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 and nine months 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, 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 if the accused has been held continuously in custody or (ii) within nine months of the date of the conviction 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 his insanity 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;
8. By declaration of judicial emergency pursuant to § 17.1-330; or
9. By administrative delays resulting from the enactment of Chapter 43 of the Acts of Assembly of 2020, Special Session I.

a. If an accused cannot be tried within the period of time required by this section due to delays described in this subdivision 9, the presiding judge shall set the trial date and issue an order certifying that such trial date is the earliest reasonable date such trial may be set to meet the ends of justice considering factors such as the length of pretrial incarceration of the defendant, court staff and facility availability, and resources of the attorney for the Commonwealth and defense attorney. Within 15 days of the entry of such order, any party may file a motion for immediate appellate review of such order with the Court of Appeals. Consideration of such motion shall take precedence on the docket. On appeal, the Court of Appeals shall review whether the delayed trial date is reasonable to meet the ends of justice considering factors such as the length of pretrial incarceration of the defendant, court staff and facility availability, and resources of the attorney for the Commonwealth and defense attorney. The

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60 *Court of Appeals may dispense with oral argument if the panel has examined any briefs and the record*
61 *and determined that oral argument is unnecessary. The order issued by the circuit court certifying that*
62 *the trial date set is the earliest reasonable date available to meet the ends of justice considering factors*
63 *such as the length of pretrial incarceration of the defendant, court staff and facility availability, and*
64 *resources of the attorney for the Commonwealth and defense attorney shall be prima facie evidence of*
65 *reasonableness, and the Court of Appeals shall not reverse such order unless it finds such order is*
66 *unreasonable and constitutes an abuse of discretion, in which case it shall remand the matter to the*
67 *circuit court to set an earlier trial date.*

68 *b. A motion for interlocutory review or the failure of a party to file a motion for interlocutory review*
69 *of an order under this subdivision 9 shall not preclude (i) a defense motion or objection seeking*
70 *dismissal of a warrant, information, or indictment or any count or charge thereof on the grounds that*
71 *the defendant would be deprived of a speedy trial in violation of the provisions of the Constitution of*
72 *the United States, the Constitution of Virginia, or this section or (ii) an appeal of any order issued by a*
73 *circuit court related to a defendant being deprived of a speedy trial in violation of the provisions of the*
74 *Constitution of the United States, the Constitution of Virginia, or this section.*

75 *c. In any case in which the court exercises authority pursuant to this subdivision 9 to set a criminal*
76 *trial outside of the period of time required by this section, the court shall hold a hearing to determine*
77 *the issue of bail. If it is determined that the accused shall be released on bail, bail shall be set and*
78 *determined in accordance with Article 1 (§ 19.2-119 et seq.) of Chapter 9.*

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

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

87 **2. That the provisions of subdivision 9 of § 19.2-243 of the Code of Virginia, as amended by this**
88 **act, shall expire on December 31, 2024.**