

HOUSE BILL NO. 404

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Delaney)

A BILL to amend and reenact §§ 17.1-275.5 and 19.2-243 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 19.2-188.4 and 19.2-188.5, relating to admission into evidence of certain forensic medical examination reports by sexual assault nurse examiners and sexual assault forensic examiners; testimony by two-way video conferencing; notice and waiver procedures.

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-275.5 and 19.2-243 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 19.2-188.4 and 19.2-188.5 as follows:

§ 17.1-275.5. Amounts to be added; judgment in favor of the Commonwealth.

A. The clerk shall assess, in addition to the fees provided for by § 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, 17.1-275.9, 17.1-275.10, 17.1-275.11, 17.1-275.11:1, or 17.1-275.12, the following costs:

- 1. Any amount paid by the Commonwealth for legal representation of the defendant;
- 2. Any amount paid for trial transcripts;
- 3. Extradition costs;
- 4. Costs of psychiatric evaluation;
- 5. Costs taxed against the defendant as appellant under Rule 5A:30 of the Rules of the Supreme Court;
- 6. Any fee for a returned check or disallowed credit card charge assessed pursuant to subdivision A 28 of § 17.1-275;
- 7. Any jury costs;

- 27 8. Any assessment made pursuant to subdivision A 10 of § 17.1-275;
- 28 9. Any fees prescribed in §§ 18.2-268.8 and 46.2-341.26:8;
- 29 10. Any court costs related to an ignition interlock device;
- 30 11. Any fee for testing for HIV;
- 31 12. Any fee for processing an individual admitted to jail as prescribed in § 15.2-1613.1;
- 32 13. Any fee for courthouse security personnel as prescribed in § 53.1-120;
- 33 14. Any fee for a DNA sample as prescribed in § 19.2-310.2;
- 34 15. Reimbursement to the Commonwealth of medical fees as prescribed in § 19.2-165.1;
- 35 16. Any fee for a local criminal justice training academy as prescribed in § 9.1-106;
- 36 17. Any fee prescribed by §§ 16.1-69.48:1.01 and 17.1-275.11;
- 37 18. Any expenses charged pursuant to subsection B or F of § 19.2-187.1 or subsection B or G of
- 38 § 19.2-188.5; and
- 39 19. Any fee for an electronic summons system as prescribed in § 17.1-279.1.

40 B. The total amount of assessments described in subsection A, including (i) the fees provided for
41 by § 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8, 17.1-275.9, 17.1-275.10,
42 17.1-275.11, 17.1-275.11:1, or 17.1-275.12 and (ii) all other fines and costs, shall be docketed by the clerk
43 as a judgment against the defendant in favor of the Commonwealth in accordance with § 8.01-446.

44 **§ 19.2-188.4. Admission into evidence of two-way video testimony related to certain forensic**
45 **medical examinations.**

46 A. Any testimony offered by either party in a preliminary hearing or sentencing hearing, or offered
47 by the accused in any hearing other than a trial, from a sexual assault nurse examiner or sexual assault
48 forensic examiner who performed a forensic medical examination may be presented by two-way video
49 conferencing. The two-way video testimony permitted by this section shall comply with the provisions of
50 subsection B of § 19.2-3.1. In addition, unless otherwise agreed by the parties and the court, (i) all orders
51 pertaining to witnesses apply to witnesses testifying by two-way video conferencing; (ii) upon request, all
52 materials read or used by the witness during his testimony shall be identified on the video; and (iii) any
53 witness testifying by two-way video conferencing shall certify at the conclusion of his testimony, under

54 penalty of perjury, that he did not engage in any off-camera communications with any person during his
55 testimony.

56 B. Nothing in this section shall be construed as requiring a locality to purchase a two-way
57 electronic video and audio communication system. Any decision to purchase such a system is at the
58 discretion of the locality.

59 **§ 19.2-188.5. Procedures for notifying accused of two-way video testimony of sexual assault**
60 **nurse examiner or sexual assault forensic examiner; waiver; continuances.**

61 A. In any trial and in any hearing other than a preliminary hearing, in which the attorney for the
62 Commonwealth intends to offer two-way video testimony by either a sexual assault nurse examiner or a
63 sexual assault forensic examiner, the attorney for the Commonwealth shall:

64 1. Provide by mail, delivery, or otherwise a copy of the forensic medical examination report and a
65 notice of the intent to introduce two-way video testimony by the sexual assault nurse examiner or sexual
66 assault forensic examiner who performed the forensic medical examination to counsel of record for the
67 accused, or to the accused if he is proceeding pro so, at no charge, no later than 28 days prior to the hearing
68 or trial;

69 2. Provide simultaneously with the copy of the report and notice of intent so provided under
70 subdivision 1 a notice to the accused of his right to object to such two-way video testimony; and

71 3. File a copy of the report and notices with the clerk of the court hearing the matter no later than
72 three business days following the day such report and notices are provided to the accused.

73 B. The accused may object in writing to admission of two-way video testimony by a sexual assault
74 nurse examiner or a sexual assault forensic examiner who performed the forensic medical examination.
75 Such objection shall be filed with the court hearing the matter, with a copy to the attorney for the
76 Commonwealth, no more than 14 days after the report and notices were filed with the clerk by the attorney
77 for the Commonwealth or the objection shall be deemed waived. If timely objection is made, such two-
78 way video testimony shall not be admissible into evidence unless (i) the objection is waived by the accused
79 or his counsel in writing or before the court or (ii) the parties stipulate before the court to the admissibility
80 of such two-way video testimony. If the accused demands, at hearing or trial, the presence of the sexual

81 assault nurse examiner or sexual assault forensic examiner who performed the examination and he is
82 thereafter found guilty of the charge or charges for which he demanded the presence of such witness, \$50
83 for expenses related to the witness's appearance at hearing or trial shall be charged to the accused as court
84 costs.

85 C. The two-way video testimony permitted by this section shall comply with the provisions of
86 subsection B of § 19.2-3.1. In addition, unless otherwise agreed by the parties and the court, (i) all orders
87 pertaining to witnesses apply to witnesses testifying by video conferencing; (ii) upon request, all materials
88 read or used by the witness during his testimony shall be identified on the video; and (iii) any witness
89 testifying by video conferencing shall certify at the conclusion of his testimony, under penalty of perjury,
90 that he did not engage in any off-camera communications with any person during his testimony.

91 D. Where the sexual assault nurse examiner or sexual assault forensic examiner who performed
92 the examination is not available for hearing or trial and the attorney for the Commonwealth has used due
93 diligence to secure the presence of such examiner, the court shall order a continuance. Any continuances
94 ordered pursuant to this subsection shall total not more than 90 days if the accused has been held
95 continuously in custody and not more than 180 days if the accused has not been held continuously in
96 custody.

97 E. Any objection by counsel for the accused, or by the accused if he is proceeding pro se, to
98 timeliness of the receipt of notice required by subsection A shall be made before hearing or trial upon his
99 receipt of actual notice unless the accused did not receive actual notice prior to hearing or trial. A showing
100 by the Commonwealth that the notice was mailed, delivered, or otherwise provided in compliance with
101 the time requirements of this section shall constitute prima facie evidence that the notice was timely
102 received by the accused. If the court finds upon the accused's objection made pursuant to this subsection
103 that he did not receive timely notice pursuant to subsection A, the accused's objection shall not be deemed
104 waived, and if the objection is made prior to hearing or trial, a continuance shall be ordered if requested
105 by either party. Any continuance ordered pursuant to this subsection shall be subject to the time limitations
106 set forth in subsection D.

107 F. Nothing in this section shall prohibit the admissibility of a forensic medical examination report
108 when the sexual assault nurse examiner or a sexual assault forensic examiner testifies at trial or the hearing
109 concerning the facts stated therein and of the results of the examination.

110 G. The accused in any hearing or trial in which a forensic medical examination report is offered
111 into evidence shall have the right to call the sexual assault nurse examiner or a sexual assault forensic
112 examiner and examine him in the same manner as if he had been called as an adverse witness. Such witness
113 shall be summoned and appear at the cost of the Commonwealth; however, if the accused calls the sexual
114 assault nurse examiner or a sexual assault forensic examiner as a witness and is found guilty of the charge
115 or charges for which such witness is summoned, \$50 for expenses related to that witness's appearance at
116 hearing or trial shall be charged to the accused as court costs.

117 H. Nothing in this section shall be construed as requiring a locality to purchase a two-way
118 electronic video and audio communication system. Any decision to purchase such a system is at the
119 discretion of the locality.

120 I. Any forensic medical examination report of a forensic medical examination performed by either
121 a sexual assault nurse examiner or a sexual assault forensic examiner filed with the court is confidential.
122 Such reports shall be filed as a part of the case record. Such reports shall be made available only by court
123 order and shall be sealed upon final order by the court, except that such reports shall be available upon
124 request to counsel of record for the accused or to the accused if he is proceeding pro se.

125 **§ 19.2-243. Limitation on prosecution of felony due to lapse of time after finding of probable**
126 **cause; misdemeanors; exceptions.**

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

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

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

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

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

- 148 1. By his insanity or by reason of his confinement in a hospital for care and observation;
- 149 2. By the witnesses for the Commonwealth being enticed or kept away, or prevented from
150 attending by sickness or accident;
- 151 3. By the granting of a separate trial at the request of a person indicted jointly with others for a
152 felony;
- 153 4. By continuance granted on the motion of the accused or his counsel, or by concurrence of the
154 accused or his counsel in such a motion by the attorney for the Commonwealth, or by the failure of the
155 accused or his counsel to make a timely objection to such a motion by the attorney for the Commonwealth,
156 or by reason of his escaping from jail or failing to appear according to his recognizance;
- 157 5. By continuance ordered pursuant to subsection I or J of § 18.2-472.1-~~or~~₂ subsection C or D of §
158 19.2-187.1, or subsection D or E of § 19.2-188.5;
- 159 6. By the inability of the jury to agree in their verdict; or
- 160 7. By a natural disaster, civil disorder, or act of God.

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

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

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