

SENATE BILL NO. 1259

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on _____)

(Patron Prior to Substitute--Senator Petersen)

A BILL to amend and reenact §§ 2.2-511, 15.2-1627, 17.1-406, 19.2-402, and 19.2-404 of the Code of Virginia, relating to criminal appeals; duties of the Attorney General and attorney for the Commonwealth.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-511, 15.2-1627, 17.1-406, 19.2-402, and 19.2-404 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-511. Criminal cases.

A. Unless specifically requested by the Governor to do so, the Attorney General shall have no authority to institute or conduct criminal prosecutions in the circuit courts of the Commonwealth except in cases involving (i) violations of the Alcoholic Beverage Control Act (§ 4.1-100 et seq.), (ii) violation of laws relating to elections and the electoral process as provided in § 24.2-104, (iii) violation of laws relating to motor vehicles and their operation, (iv) the handling of funds by a state bureau, institution, commission or department, (v) the theft of state property, (vi) violation of the criminal laws involving child pornography and sexually explicit visual material involving children, (vii) the practice of law without being duly authorized or licensed or the illegal practice of law, (viii) violations of § 3.2-4212 or 58.1-1008.2, (ix) with the concurrence of the local attorney for the Commonwealth, violations of the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.), (x) with the concurrence of the local attorney for the Commonwealth, violations of the Air Pollution Control Law (§ 10.1-1300 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), and the State Water Control Law (§ 62.1-44.2 et seq.), (xi) with the concurrence of the local attorney for the Commonwealth, violations of Chapters 2 (§ 18.2-18 et seq.), 3 (§ 18.2-22 et seq.), and 10 (§ 18.2-434 et seq.) of Title 18.2, if such crimes relate to violations of law

27 listed in clause (x) of this subsection, (xii) with the concurrence of the local attorney for the
 28 Commonwealth, criminal violations by Medicaid providers or their employees in the course of doing
 29 business, or violations of Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, in which cases the Attorney General
 30 may leave the prosecution to the local attorney for the Commonwealth, or he may institute proceedings
 31 by information, presentment or indictment, as appropriate, and conduct the same, (xiii) with the
 32 concurrence of the local attorney for the Commonwealth, violations of Article 9 (§ 18.2-246.1 et seq.) of
 33 Chapter 6 of Title 18.2, (xiv) with the concurrence of the local attorney for the Commonwealth, assisting
 34 in the prosecution of violations of §§ 18.2-186.3 and 18.2-186.4, (xv) with the concurrence of the local
 35 attorney for the Commonwealth, assisting in the prosecution of violations of § 18.2-46.2, 18.2-46.3, or
 36 18.2-46.5 when such violations are committed on the grounds of a state correctional facility, and (xvi)
 37 with the concurrence of the local attorney for the Commonwealth, assisting in the prosecution of violations
 38 of Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2.

39 In all other criminal cases in the circuit courts, except where the law provides otherwise, the
 40 authority of the Attorney General to appear or participate in the proceedings shall ~~not attach unless and~~
 41 ~~until a notice of appeal has been filed with~~ when the appellate court receives the record after a notice of
 42 appeal has been filed with the clerk of the circuit court noting an appeal to the Court of Appeals or the
 43 Supreme Court. In all criminal cases before the Court of Appeals or the Supreme Court in which the
 44 Commonwealth is a party or is directly interested, the Attorney General shall appear and represent the
 45 Commonwealth upon receipt of the record in the appellate court, unless, and with the consent of the
 46 Attorney General, the attorney for the Commonwealth who prosecuted the underlying criminal case files
 47 a notice of appearance to represent the Commonwealth in any such appeal. However, in an appeal
 48 regarding bail, bond, or recognizance pursuant to Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2
 49 or subsection B of § 19.2-398, the attorney for the Commonwealth who prosecuted the underlying criminal
 50 case shall continue to represent the Commonwealth on appeal.

51 B. The Attorney General shall, upon request of a person who was the victim of a crime and subject
 52 to such reasonable procedures as the Attorney General may require, ensure that such person is given notice
 53 of the filing, of the date, time and place and of the disposition of any appeal or habeas corpus proceeding

54 involving the cases in which such person was a victim. For the purposes of this section, a victim is an
55 individual who has suffered physical, psychological or economic harm as a direct result of the commission
56 of a crime; a spouse, child, parent or legal guardian of a minor or incapacitated victim; or a spouse, child,
57 parent or legal guardian of a victim of a homicide. Nothing in this subsection shall confer upon any person
58 a right to appeal or modify any decision in a criminal, appellate or habeas corpus proceeding; abridge any
59 right guaranteed by law; or create any cause of action for damages against the Commonwealth or any of
60 its political subdivisions, the Attorney General or any of his employees or agents, any other officer,
61 employee or agent of the Commonwealth or any of its political subdivisions, or any officer of the court.

62 **§ 15.2-1627. Duties of attorneys for the Commonwealth and their assistants.**

63 A. No attorney for the Commonwealth, or assistant attorney for the Commonwealth, shall be
64 required to carry out any duties as a part of his office in civil matters of advising the governing body and
65 all boards, departments, agencies, officials and employees of his county or city; of drafting or preparing
66 county or city ordinances; of defending or bringing actions in which the county or city, or any of its boards,
67 departments or agencies, or officials and employees thereof, shall be a party; or in any other manner of
68 advising or representing the county or city, its boards, departments, agencies, officials and employees,
69 except in matters involving the enforcement of the criminal law within the county or city.

70 B. The attorney for the Commonwealth and assistant attorney for the Commonwealth shall be a
71 part of the department of law enforcement of the county or city in which he is elected or appointed, and
72 shall have the duties and powers imposed upon him by general law, including the duty of prosecuting all
73 warrants, indictments or informations charging a felony, and he may in his discretion, prosecute Class 1,
74 2 and 3 misdemeanors, or any other violation, the conviction of which carries a penalty of confinement in
75 jail, or a fine of \$500 or more, or both such confinement and fine. He shall enforce all forfeitures, and
76 carry out all duties imposed upon him by § 2.2-3126. He may enforce the provisions of § 18.2-268.3, 29.1-
77 738.2, 46.2-341.20:7, or 46.2-341.26:3. He may, in his discretion, file a notice of petition for appeal with
78 the circuit court for the appeal of a criminal case for which he was the prosecuting attorney pursuant to
79 Chapter 25 (§ 19.2-398 et seq.) of Title 19.2 and he ~~may appear and~~ shall continue to represent the
80 Commonwealth in any ~~criminal case on~~ such appeal before the Court of Appeals or the Supreme Court

81 for which he was the prosecuting attorney, ~~provided that the Attorney General consented to such~~
82 ~~appearance pursuant to § 2.2-511~~ unless and until the Court of Appeals grants the petition, except that he
83 shall remain counsel of record in an appeal regarding bail, bond, or recognizance pursuant to Article 1 (§
84 19.2-119 et seq.) of Chapter 9 of Title 19.2 or subsection B of § 19.2-398.

85 He shall also represent the Commonwealth in an appeal of a civil matter related to the enforcement
86 of a criminal law or a criminal case for which he was the prosecuting attorney, including a petition for
87 expungement of a defendant's criminal record, an action of forfeiture filed in accordance with the
88 provisions of Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2, or any matter which he may enforce
89 pursuant to this section.

90 **§ 17.1-406. Appeals in criminal matters; cases over which Court of Appeals does not have**
91 **jurisdiction.**

92 A. Any aggrieved party may appeal to the Court of Appeals from any final conviction in a circuit
93 court of a traffic infraction or a crime. The Commonwealth or any county, city, or town may petition the
94 Court of Appeals for an appeal pursuant to this subsection in any case in which such party previously
95 could have petitioned the Supreme Court for a writ of error under § 19.2-317. The Commonwealth may
96 also petition the Court of Appeals for an appeal in a criminal case pursuant to § 19.2-398.

97 B. In accordance with other applicable provisions of law, appeals lie directly to the Supreme Court
98 from a final decision, judgment, or order of a circuit court involving a petition for a writ of habeas corpus;
99 from any action collaterally attacking a criminal conviction, including a motion filed under § 8.01-428;
100 from any final finding, decision, order, or judgment of the State Corporation Commission; and from
101 proceedings under §§ 54.1-3935 and 54.1-3937. Complaints of the Judicial Inquiry and Review
102 Commission shall be filed with the Supreme Court of Virginia. The Court of Appeals shall not have
103 jurisdiction over any cases or proceedings described in this subsection.

104 **§ 19.2-402. Petition for appeal; brief in opposition; time for filing.**

105 A. When a notice of appeal has been filed pursuant to § 19.2-400, the Commonwealth may petition
106 the Court of Appeals for an appeal pursuant to § 19.2-398. The Commonwealth shall be represented by

107 ~~the Attorney General or the attorney for the Commonwealth prosecuting the case if he filed a notice of~~
108 ~~appearance pursuant to § 2.2-511.~~

109 B. The provisions of this subsection apply only to pretrial appeals. The petition for a pretrial appeal
110 shall be filed with the clerk of the Court of Appeals not more than 14 days after the notice of transcript or
111 written statement of facts required by § 19.2-405 is filed or, if there are objections thereto, within 14 days
112 after the judge signs the transcript or written statement of facts. The accused may file a brief in opposition
113 with the clerk of the Court of Appeals within 14 days after the filing of the petition for pretrial appeal. If
114 the accused has filed a notice of cross appeal, he shall file a petition for cross appeal to be consolidated
115 with, and filed within the same time period as, his brief in opposition. The Commonwealth may file a brief
116 in opposition to any petition for cross appeal within 10 days after the petition for cross appeal is filed.
117 Except as specifically provided in this section, all other requirements for the petition for pretrial appeal
118 and brief in opposition shall conform as nearly as practicable to Part Five A of the Rules of the Supreme
119 Court of Virginia.

120 **§ 19.2-404. Procedures on awarded pretrial appeal.**

121 This section applies only to pretrial appeals. If the Court of Appeals grants the Commonwealth's
122 petition for a pretrial appeal, the Attorney General shall represent the Commonwealth during that appeal
123 ~~unless the attorney for the Commonwealth prosecuting the case has filed a notice of appearance pursuant~~
124 ~~to § 2.2-511.~~

125 The Commonwealth shall file its opening brief in the office of the clerk of the Court of Appeals
126 within 25 days after the date of the certificate awarding the appeal. The brief of the appellee shall be filed
127 in the office of the clerk of the Court of Appeals within 25 days after the filing of the Commonwealth's
128 opening brief. The Commonwealth may then file a reply brief, including its response to any cross appeal,
129 in the office of the clerk of the Court of Appeals within 15 days after the filing of the brief of the accused.
130 With the permission of a judge of the Court of Appeals, the time for filing any brief may be extended for
131 good cause shown. ~~Four copies of each brief shall be filed and three copies shall be mailed or delivered~~
132 ~~to opposing counsel on or before the date of filing.~~ Except as specifically provided in this section, all other
133 requirements of the brief shall conform as nearly as practicable to Part Five A of the Rules of the Supreme

134 Court of Virginia. The Court of Appeals shall accelerate the appeal on its docket and render its decision
135 not later than 60 days after the filing of the appellee's brief or after the time for filing such brief has
136 expired.

137 When the opinion is rendered by the Court of Appeals, the mandate shall immediately issue and
138 the clerk of the Court of Appeals shall return the record forthwith to the clerk of the trial court. No petition
139 for rehearing may be filed.

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