

SENATE BILL NO. 144

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator Carroll Foy)

A BILL to amend and reenact § 19.2-218 of the Code of Virginia, relating to nolle prosequi or dismissal without prejudice prior to preliminary hearing; subsequent indictment.

**Be it enacted by the General Assembly of Virginia:**

**1. That § 19.2-218 of the Code of Virginia is amended and reenacted as follows:**

**§ 19.2-218. Preliminary hearing required for person arrested on charge of felony; waiver.**

A. No person who is arrested on a charge of felony shall be denied a preliminary hearing upon the question of whether there is reasonable ground to believe that he committed ~~the~~ that offense and no indictment shall be returned in a court of record against any such person for that charge, any other charge that would be a greater or lesser offense of that charge, or any other charge arising out of the same transaction or occurrence of that charge prior to such hearing unless such hearing is waived in writing by the accused.

B. No court shall grant any motion by the Commonwealth to nolle prosequi or dismiss a felony charge prior to conducting a preliminary hearing on that charge without the consent of the defendant.

C. On motion of the defendant, a court in which any such indictment is returned in violation of this section shall dismiss any such indictment, or upon motion of the Commonwealth, shall stay prosecution in that court and remand the case to district court for a preliminary hearing on any felony charge for which such defendant was indicted. The provisions of § 19.2-243 shall not apply to such period of time as the failure to try the accused was caused by the stay of prosecution and remand of the case to district court pursuant to this section.

