

SENATE BILL NO. 144

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Senator Carroll Foy)

A BILL to amend and reenact §§ 19.2-218 and 19.2-243 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 and 19.2-243 of the Code of Virginia are amended and reenacted as follows:

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

A. No person who ~~is~~ was arrested on a charge of felony shall be denied a preliminary hearing upon the question of whether there is ~~reasonable ground~~ probable cause to believe that he committed ~~the~~ that offense and no indictment shall be returned in a court of record against any such person for such felony 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, the court in which any 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. Such motion shall be made within 21 days of service of any indictment upon such defendant.

D. Upon remand to the district court pursuant to subsection C, the district court shall conduct the preliminary hearing pursuant to § 19.2-183 on the felony charge contained in the indictment and, if probable cause is found, shall then certify such indictment to the circuit court for further proceedings as provided by law.

27 E. If, upon remand, the district court finds that probable cause does not exist to support the felony
28 charge contained in the indictment, the court shall certify such finding to the circuit court. Upon receipt
29 of the certification of such finding, the circuit court shall dismiss such indictment with or without
30 prejudice.

31 F. Nothing in this section shall be construed to limit the authority of the attorney for the
32 Commonwealth from seeking an indictment for the original charge or any charge arising out of the same
33 facts and circumstances if a preliminary hearing was held on the original charge for which the defendant
34 was arrested.

35 **§ 19.2-243. Limitation on prosecution of felony due to lapse of time after finding of probable**
36 **cause; misdemeanors; exceptions.**

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

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

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

50 Where a case is before a circuit court on appeal from a conviction of a misdemeanor or traffic
51 infraction in a district court, the accused shall be forever discharged from prosecution for such offense if
52 the trial de novo in the circuit court is not commenced (i) within five months from the date of the
53 conviction if the accused has been held continuously in custody or (ii) within nine months of the date of

54 the conviction if the accused has been recognized for his appearance in the circuit court to answer for such
55 offense.

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

58 1. By his insanity or by reason of his confinement in a hospital for care and observation;

59 2. By the witnesses for the Commonwealth being enticed or kept away, or prevented from
60 attending by sickness or accident;

61 3. By the granting of a separate trial at the request of a person indicted jointly with others for a
62 felony;

63 4. By continuance granted on the motion of the accused or his counsel, or by concurrence of the
64 accused or his counsel in such a motion by the attorney for the Commonwealth, or by the failure of the
65 accused or his counsel to make a timely objection to such a motion by the attorney for the Commonwealth,
66 or by reason of his escaping from jail or failing to appear according to his recognizance;

67 5. By continuance ordered pursuant to subsection I or J of § 18.2-472.1 or subsection C or D of §
68 19.2-187.1;

69 6. By the inability of the jury to agree in their verdict;~~or~~

70 7. By a natural disaster, civil disorder, or act of God; or

71 8. By remand of an indictment to the district court for a preliminary hearing pursuant to § 19.2-
72 218, except that such period of time shall recommence upon a finding of probable cause by such district
73 court.

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

76 For the purposes of this section, an arrest on an indictment or warrant or information or
77 presentment is deemed to have occurred only when such indictment, warrant, information, or presentment
78 or the summons or capias to answer such process is served or executed upon the accused and a trial is
79 deemed commenced at the point when jeopardy would attach or when a plea of guilty or nolo contendere

80 is tendered by the defendant. The lodging of a detainer or its equivalent shall not constitute an arrest under
81 this section.

82 #