

## 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 preliminary hearing; nolle prosequi prior to preliminary hearing.

**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~~ warrant charging him with a felony offense 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 offense or any other offense arising out of the same transaction or occurrence of that offense prior to such hearing unless such hearing is waived in writing by the accused.

B. On motion of the defendant, if any indictment as described in subsection A is returned without a preliminary hearing pursuant to § 19.2-183, the court shall stay prosecution in that court and remand the case to district court for a preliminary hearing on any felony offense for which such defendant was indicted. Such motion shall be made within 21 days of service of any indictment upon such defendant.

C. Upon remand to the district court pursuant to subsection B, the district court shall conduct the preliminary hearing pursuant to § 19.2-183 on the felony offense 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.

D. If, upon remand, the district court finds that probable cause does not exist to support the felony offense contained in the indictment, the court shall certify such finding to the circuit court. Upon receipt

of the certification of such finding, the circuit court shall dismiss such indictment with or without prejudice.

E. Nothing in this section shall be construed to (i) limit the authority of the attorney for the Commonwealth from seeking an indictment for the original offense or any offense arising out of the same facts and circumstances if a preliminary hearing was held on the original offense for which the defendant was arrested or (ii) require a preliminary hearing for an offense originally brought by direct indictment, information, or presentment in a circuit court.

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

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

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

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

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