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HOUSE BILL NO. 1394

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on March 3, 2010)

(Patron Prior to Substitute—Delegate Cleaveland)

A BILL to amend and reenact §§ 19.2-157 and 19.2-160 of the Code of Virginia, relating to incarceration option for certain misdemeanors.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-157 and 19.2-160 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-157. Duty of court when accused appears without counsel.

Except as may otherwise be provided in §§ 16.1-266 through 16.1-268, and subject to the provisions of subsection B of § 19.2-160, whenever a person charged with a criminal offense the penalty for which may be death or confinement in the state correctional facility or jail, including charges for revocation of suspension of imposition or execution of sentence or probation, appears before any court without being represented by counsel, the court shall inform him of his right to counsel. The accused shall be allowed a reasonable opportunity to employ counsel or, if appropriate, the statement of indigence provided for in § 19.2-159 may be executed.

§ 19.2-160. Appointment of counsel or waiver of right.

A. If the charge against the accused is a crime the penalty for which may be incarceration, and the accused is not represented by counsel, the court shall ascertain by oral examination of the accused whether or not the accused desires to waive his right to counsel.

In the event the accused desires to waive his right to counsel, and the court ascertains that such waiver is voluntary and intelligently made, then the court shall provide the accused with a statement to be executed by the accused to document his waiver. The statement shall be in a form designed and provided by the Supreme Court. Any executed statement herein provided for shall be filed with and become a part of the record of such proceeding.

In the absence of a waiver of counsel by the accused, and if he shall claim that he is indigent, the court shall proceed in the same manner as is provided in § 19.2-159.

Should the defendant refuse or otherwise fail to sign either of the statements described in this section and § 19.2-159, the court shall note such refusal on the record. Such refusal shall be deemed to be a waiver of the right to counsel, and the court, after so advising the accused and offering him the opportunity to rescind his refusal shall, if such refusal is not rescinded and the accused's signature given, proceed to hear and decide the case.

B. However, if, prior to the commencement of the trial, the court states in writing, either upon the request of the attorney for the Commonwealth or, in the absence of the attorney for the Commonwealth, upon the court's own motion, that a sentence of incarceration will not be imposed if the defendant is convicted, in any misdemeanor case or class of misdemeanor cases for which a sentence of incarceration may by law be imposed, but is not mandatory, the prosecuting attorney shall advise the court, prior to the appointment of counsel for the defendant, whether or not he seeks a sentence of incarceration in such case or class of cases should be imposed if the accused is convicted.

If the prosecuting attorney advises the court that he does not seek a sentence of incarceration in such case or class of cases, the court may try the case without appointing counsel, and in such event no sentence of incarceration shall be imposed.

If the prosecuting attorney advises the court that the imposition of a sentence of incarceration should remain an option in the case or class of cases or if he rescinds his previous advice that incarceration not be imposed in the case or class of cases, the court shall proceed in the same manner as is provided in § 19.2-159 and subsection A of this section.

For purposes of this section, "prosecuting attorney" means the attorney for the Commonwealth in the jurisdiction where the case will be tried, and when the prosecution is for a violation of a local ordinance, the attorney who prosecutes ordinance violations for the locality.

2. That the provisions of this act shall expire on July 1, 2013.

HOUSE SUBSTITUTE

HB1394H1