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Support HB 246 – End Trial by Ambush in the Commonwealth

HB 246 would provide criminal defendants facing felony charges and their attorneys with access to police reports of the crime alleged.

Virginia’s criminal discovery rules amount to trial by ambush. Virginia’s criminal discovery rules are some of the most restrictive in the nation. The current rules provide that before trial, prosecutors can withhold police reports and witness statements from criminal defendants who face felony charges and their attorneys. Defendants and their attorneys often do not know the details of the allegations against them while making the critical decision of whether to take a plea bargain or go to trial. While HB 246 does not require prosecutors to disclose witness statements, it does improve on the current rules by requiring the disclosure of all relevant police reports.

The Supreme Court of Virginia has failed to act. In March 2015, a blue-ribbon commission – appointed by the Supreme Court of Virginia and comprised of judges, prosecutors, defense attorneys, law professors, and law enforcement – issued a 60-page report full of recommendations that would expand defendants’ pretrial access to information while protecting victim and witness safety. In November 2015, the Supreme Court rejected the changes in a one-sentence order: “Having considered the Committee’s report and the public comments in response thereto, the Court declines to adopt the Committee’s recommendations.” Since then, editorials in the Washington Post, Richmond Times-Dispatch, and Virginia Lawyers Weekly have all called for reforms to the current rules.

The current rules lead to arbitrary and uneven justice in the Commonwealth. Under the current criminal discovery rules, each elected Commonwealth’s Attorney decides how much information about a case the attorneys in that office will disclose to the defense before trial. A person charged in one jurisdiction might have access to the entire file, leading to a well-informed decision about whether to go to trial. But a person charged in a neighboring jurisdiction may only get access to the bare minimum required by the rules. This capricious system leads to uneven outcomes, and cannot be tolerated.

In cases about mere money or property, information is shared freely. In a civil lawsuit, each side “must turn over virtually everything to the opponent and sit for pretrial depositions,” according to the Washington Post. Yet a criminal defendant who faces decades in prison might not have access to the official police record of his case or the statements of people who saw the alleged crime. The current criminal discovery rules are inconsistent with the basic American principles that all persons who are charged with a crime have a right to a fair trial and the effective assistance of counsel.

HB 246 will help end trial by ambush in the Commonwealth.