

CHIEF JUSTICE
DONALD W. LEMONS

JUSTICES
S. BERNARD GOODWYN
WILLIAM C. MIMS
ELIZABETH A. McCLANAHAN
CLEO E. POWELL
D. ARTHUR KELSEY
STEPHEN R. McCULLOUGH

SENIOR JUSTICES
CHARLES S. RUSSELL
ELIZABETH B. LACY
LAWRENCE L. KOONTZ, JR.
LEROY F. MILLETTE, JR.

SUPREME COURT OF VIRGINIA



100 NORTH NINTH STREET
RICHMOND, VIRGINIA 23219-2334
(804) 786-6455
WWW.COURTS.STATE.VA.US

CLERK
PATRICIA L. HARRINGTON
EXECUTIVE SECRETARY
KARL R. HADE
CHIEF STAFF ATTORNEY
K. LORRAINE LORD
REPORTER OF DECISIONS
KENT SINCLAIR
STATE LAW LIBRARIAN
GAIL WARREN

September 5, 2018

Today the Supreme Court of Virginia has promulgated new rules regarding criminal discovery in the Commonwealth.

For a number of years, many defense attorneys, Commonwealth's Attorneys, bar associations and academics have advocated reform. In 2014, then Chief Justice Cynthia D. Kinser appointed the Special Committee on Criminal Discovery Rules to consider reforms to the existing criminal discovery rules. The committee presented a final report to the Court on December 2, 2014. The recommendations were posted for public comment. The Court considered the recommendations and the comments, and on November 13, 2015, the Court issued an order wherein it "declined to adopt the Committee's recommendations."

Thereafter, legislative proposals to amend the criminal discovery process failed in 2016 and 2017. With the encouragement of the Court, Virginia State Bar President Michael Robinson appointed a task force of the Bar to consider this matter once again.

The VSB Criminal Discovery Reform Task Force submitted to the Court proposed revisions to Rules 3A:11 and 3A:12 regarding criminal discovery, and the Court posted these revisions for public comment in February 2018. The Court then considered and approved these proposed revisions at its August 28, 2018, business meeting.

Criminal discovery reform is a complex matter, and while there is not 100% agreement on all issues, this proposal has significant support from the numerous stakeholders involved in the criminal discovery process. Reforms of this magnitude require cooperation among the three branches of our government. The Court is aware that these revisions may impact the workload of Commonwealth's Attorneys. The Court is also aware of language in the 2018 Appropriation Act (Compensation Board (157), Item 73.U) that requires the Executive Secretary of the Compensation Board to convene a working group "to investigate how body worn cameras have or may continue to impact the workloads experienced by Commonwealth's Attorneys offices." These new rules and increased demands upon prosecutors from the use of body worn cameras may have a financial impact. Accordingly, the Court is delaying the effective date of these rule revisions until July 1, 2019 to give the General Assembly time to receive the report from the Compensation Board's working group and consider the cost of implementation of these rules.

A handwritten signature in blue ink that reads "Donald W. Lemons".

Donald W. Lemons
Chief Justice
Supreme Court of Virginia