

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

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after so advising the accused and offering him the opportunity to rescind his refusal shall, if such refusal is not rescinded and the accused's signature given, proceed to hear and decide the case. 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, the court may try the case without appointing counsel, and in such event no sentence of incarceration shall be imposed.

Code 1950, § 19.1-241.9; 1973, c. 316; 1975, c. 495; 1978, c. 365; 1979, c. 468; 1983, c. 97; 1989, c. 385.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.