

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 16.1-356 and 16.1-361 of the Code of Virginia, relating to juvenile competency evaluation; licensed professional counselors; compensation.

[S 301]

Approved

Be it enacted by the General Assembly of Virginia:**1. That §§ 16.1-356 and 16.1-361 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-356. Raising question of competency to stand trial; evaluation and determination of competency.

A. If, at any time after the attorney for the juvenile has been retained or appointed pursuant to a delinquency proceeding and before the end of trial, the court finds, sua sponte or upon hearing evidence or representations of counsel for the juvenile or the attorney for the Commonwealth, that there is probable cause to believe that the juvenile lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense, the court shall order that a competency evaluation be performed by at least one psychiatrist, clinical psychologist, *licensed professional counselor*, or licensed clinical social worker who is qualified by training and experience in the forensic evaluation of juveniles.

The Commissioner of Mental Health, Mental Retardation and Substance Abuse Services shall approve the training and qualifications for individuals authorized to conduct juvenile competency evaluations and provide restoration services to juveniles pursuant to this article. The Commissioner shall also provide all juvenile courts with a list of guidelines for the court to use in the determination of qualifying individuals as experts in matters relating to juvenile competency and restoration.

B. The evaluation shall be performed on an outpatient basis at a community services board or behavioral health authority, juvenile detention home or juvenile justice facility unless the court specifically finds that (i) the results of the outpatient competency evaluation indicate that hospitalization of the juvenile for evaluation of competency is necessary or (ii) the juvenile is currently hospitalized in a psychiatric hospital. If one of these findings is made, the court, under authority of this subsection, may order the juvenile sent to a hospital designated by the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services as appropriate for the evaluation of juveniles against whom a delinquency petition has been filed.

C. The court shall require the attorney for the Commonwealth to provide to the evaluators appointed under subsection A any information relevant to the evaluation, including, but not limited to (i) a copy of the warrant or petition, (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the juvenile, and the judge ordering the evaluation, and (iii) information about the alleged offense. The court shall require the attorney for the juvenile to provide to the evaluator only the psychiatric records and other information that is deemed relevant to the evaluation of competency. The moving party shall provide the evaluator a summary of the reasons for the evaluation request. All information required by this subsection shall be provided to the evaluator within ninety-six hours of the issuance of the court order requiring the evaluation and when applicable, shall be submitted prior to admission to the facility providing the inpatient evaluation. If the ninety-six-hour period expires on a Saturday, Sunday or other legal holiday, the ninety-six hours shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

D. If the juvenile is hospitalized under the provisions of subsection B, the juvenile shall be hospitalized for such time as the director of the hospital deems necessary to perform an adequate evaluation of the juvenile's competency, but not to exceed ten days from the date of admission to the hospital. All evaluations shall be completed and the report filed with the court within fourteen days of receipt by the evaluator of all information required under subsection C.

E. Upon completion of the evaluation, the evaluator shall promptly and in no event exceeding fourteen days after receipt of all required information submit the report in writing to the court and the attorneys of record concerning (i) the juvenile's capacity to understand the proceedings against him; (ii) his ability to assist his attorney; and (iii) his need for services in the event he is found incompetent, including a description of the suggested necessary services and least restrictive setting to assist the juvenile in restoration to competency. No statements of the juvenile relating to the alleged offense shall be included in the report.

F. After receiving the report described in subsection E, the court shall promptly determine whether the juvenile is competent to stand trial for adjudication or disposition. A hearing on the juvenile's

57 competency is not required unless one is requested by the attorney for the Commonwealth or the
58 attorney for the juvenile or when required under § 16.1-357 B. If a hearing is held, the party alleging
59 that the juvenile is incompetent shall bear the burden of proving by a preponderance of the evidence the
60 juvenile's incompetency. The juvenile shall have the right to notice of the hearing and the right to
61 personally participate in and introduce evidence at the hearing.

62 If the juvenile is otherwise able to understand the charges against him and assist in his defense, a
63 finding of incompetency shall not be made based solely on any or all of the following: (i) the juvenile's
64 age or developmental factors, (ii) the juvenile's claim to be unable to remember the time period
65 surrounding the alleged offense, or (iii) the fact that the juvenile is under the influence of medication.

66 § 16.1-361. Compensation of experts.

67 Each psychiatrist, clinical psychologist, licensed clinical social worker, *licensed professional*
68 *counselor*, or other expert appointed by the court to render professional service pursuant to § 16.1-356,
69 shall receive a reasonable fee for such service. With the exception of services provided by state mental
70 health or mental retardation facilities, the fee shall be determined in each instance by the court that
71 appointed the expert, in accordance with guidelines established by the Supreme Court after consultation
72 with the Department of Mental Health, Mental Retardation and Substance Abuse Services. If any such
73 expert is required to appear as a witness in any hearing held pursuant to § 16.1-356, he shall receive
74 mileage and a fee of \$100 for each day during which he is required to serve. An itemized account of
75 expenses, duly sworn to, must be presented to the court, and when allowed shall be certified to the
76 Supreme Court for payment out of the state treasury, and be charged against the appropriations made to
77 pay criminal charges. Allowance for the fee and for the per diem authorized shall also be made by order
78 of the court, duly certified to the Supreme Court for payment out of the appropriation to pay criminal
79 charges.