

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act to amend and reenact § 19.2-169.3 of the Code of Virginia, as it is currently effective and as it shall become effective, relating to disposition of the unrestorably incompetent defendant.*

[H 2514]

Approved

**Be it enacted by the General Assembly of Virginia:**

**1. That § 19.2-169.3 of the Code of Virginia, as it is currently effective and as it shall become effective, is amended and reenacted as follows:**

§ 19.2-169.3. (Effective until July 1, 2004) Disposition of the unrestorably incompetent defendant.

A. If, at any time after the defendant is ordered to undergo treatment pursuant to subsection A of § 19.2-169.2, the director of the treating facility concludes that the defendant is likely to remain incompetent for the foreseeable future, he shall send a report to the court so stating. The report shall also indicate whether, in the director's opinion, the defendant should be released, committed pursuant to § 37.1-67.3, or certified pursuant to § 37.1-65.1 in the event he is found to be unrestorably incompetent. Upon receipt of the report, the court shall make a competency determination according to the procedures specified in subsection E of § 19.2-169.1. If the court finds that the defendant is incompetent and is likely to remain so for the foreseeable future, it shall order that he be (i) released, (ii) committed pursuant to § 37.1-67.3, or (iii) certified pursuant to § 37.1-65.1. If the court finds the defendant incompetent but restorable to competency in the foreseeable future, it may order treatment continued until six months have elapsed from the date of the defendant's initial admission under subsection A of § 19.2-169.2.

B. At the end of six months from the date of the defendant's initial admission under subsection A of § 19.2-169.2 if the defendant remains incompetent in the opinion of the director, the director shall so notify the court and make recommendations concerning disposition of the defendant as described above. The court shall hold a hearing according to the procedures specified in subsection E of § 19.2-169.1 and, if it finds the defendant unrestorably incompetent, shall order one of the dispositions described above. If the court finds the defendant incompetent but restorable to competency, it may order continued treatment under subsection A of § 19.2-169.2 for additional six-month periods, provided a hearing pursuant to subsection E of § 19.2-169.1 is held at the completion of each such period and the defendant continues to be incompetent but restorable to competency in the foreseeable future.

C. If not dismissed ~~without prejudice~~ at an earlier time, charges against an unrestorable incompetent defendant shall be dismissed on the date upon which his sentence would have expired had he been convicted and received the maximum sentence for the crime charged, or on the date five years from the date of his arrest for such charges, whichever is sooner.

D. *In any case when an incompetent defendant is charged with capital murder, notwithstanding any other provision of this section, the charge shall not be dismissed and the court having jurisdiction over the capital murder case may order that the defendant receive continued treatment under subsection A of § 19.2-169.2 for additional six-month periods without limitation, provided that (i) a hearing pursuant to subsection E of § 19.2-169.1 is held at the completion of each such period, (ii) the defendant remains incompetent, (iii) the court finds continued treatment to be medically appropriate, and (iv) the defendant presents a danger to himself or others.*

E. *The attorney for the Commonwealth may bring charges that have been dismissed against the defendant when he is restored to competency.*

§ 19.2-169.3. (Effective July 1, 2004) Disposition of the unrestorably incompetent defendant.

A. If, at any time after the defendant is ordered to undergo treatment pursuant to subsection A of § 19.2-169.2, the director of the treating facility concludes that the defendant is likely to remain incompetent for the foreseeable future, he shall send a report to the court so stating. The report shall also indicate whether, in the director's opinion, the defendant should be released, committed pursuant to § 37.1-67.3, committed pursuant to § 37.1-70.9, or certified pursuant to § 37.1-65.1 in the event he is found to be unrestorably incompetent. Upon receipt of the report, the court shall make a competency determination according to the procedures specified in subsection E of § 19.2-169.1. If the court finds that the defendant is incompetent and is likely to remain so for the foreseeable future, it shall order that he be (i) released, (ii) committed pursuant to § 37.1-67.3, (iii) reviewed for commitment pursuant to § 37.1-70.6, or (iv) certified pursuant to § 37.1-65.1. If the court finds the defendant incompetent but restorable to competency in the foreseeable future, it may order treatment continued until six months have elapsed from the date of the defendant's initial admission under subsection A of § 19.2-169.2.

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57 B. At the end of six months from the date of the defendant's initial admission under subsection A of  
58 § 19.2-169.2 if the defendant remains incompetent in the opinion of the director, the director shall so  
59 notify the court and make recommendations concerning disposition of the defendant as described above.  
60 The court shall hold a hearing according to the procedures specified in subsection E of § 19.2-169.1 and,  
61 if it finds the defendant unrestorably incompetent, shall order one of the dispositions described above. If  
62 the court finds the defendant incompetent but restorable to competency, it may order continued treatment  
63 under subsection A of § 19.2-169.2 for additional six-month periods, provided a hearing pursuant to  
64 subsection E of § 19.2-169.1 is held at the completion of each such period and the defendant continues  
65 to be incompetent but restorable to competency in the foreseeable future.

66 C. ~~If not~~ *Unless an incompetent defendant is charged with capital murder or the charges against an*  
67 *incompetent criminal defendant have been previously dismissed without prejudice at an earlier time,*  
68 charges against an unrestorably incompetent defendant shall be dismissed on the date upon which his  
69 sentence would have expired had he been convicted and received the maximum sentence for the crime  
70 charged, or on the date five years from the date of his arrest for such charges, whichever is sooner.

71 D. If the court orders an unrestorably incompetent defendant to be reviewed for commitment  
72 pursuant to § 37.1-70.6, it shall order the attorney for the Commonwealth in the jurisdiction wherein the  
73 defendant was charged and the Commissioner of the Department of Mental Health, Mental Retardation  
74 and Substance Abuse Services to provide the Attorney General with any information relevant to the  
75 review, including, but not limited to: (i) a copy of the warrant or indictment, (ii) a copy of the  
76 defendant's criminal record, (iii) information about the alleged crime, (iv) a copy of the competency  
77 report completed pursuant to § 19.2-169.1, and (v) a copy of the report prepared by the director of the  
78 defendant's treating facility pursuant to this section. The court shall further order that the defendant be  
79 held in the custody of the Department of Mental Health, Mental Retardation and Substance Abuse  
80 Services for secure confinement and treatment until the Attorney General's review and any subsequent  
81 hearing or trial are completed. If the court receives notice that the Attorney General has declined to file  
82 a petition for the commitment of an unrestorably incompetent defendant as a sexually violent predator  
83 after conducting a review pursuant to § 37.1-70.6, the court shall order that the defendant be released,  
84 committed pursuant to § 37.1-67.3, or certified pursuant to § 37.1-65.1.

85 E. *In any case when an incompetent defendant is charged with capital murder, notwithstanding any*  
86 *other provision of this section, the charge shall not be dismissed and the court having jurisdiction over*  
87 *the capital murder case may order that the defendant receive continued treatment under subsection A of*  
88 *§ 19.2-169.2 for additional six-month periods without limitation, provided that (i) a hearing pursuant to*  
89 *subsection E of § 19.2-169.1 is held at the completion of each such period, (ii) the defendant remains*  
90 *incompetent, (iii) the court finds continued treatment to be medically appropriate, and (iv) the defendant*  
91 *presents a danger to himself or others.*

92 F. *The attorney for the Commonwealth may bring charges that have been dismissed against the*  
93 *defendant when he is restored to competency.*