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HOUSE BILL NO. 2514

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 31, 2003)

(Patrons Prior to Substitute—Delegates McDonnell and Moran [HB 2384])

A *BILL to amend and reenact § 19.2-169.3 of the Code of Virginia, relating to disposition of the unrestorably incompetent defendant.*

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-169.3 of the Code of Virginia 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~~ 6 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~~ 6 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~~ 1 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~~ 6-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 *without prejudice* 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~~ 5 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 6-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.*

§ 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~~ 6 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~~ 6 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,

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60 if it finds the defendant unrestorably incompetent, shall order ~~one~~ 1 of the dispositions described above.
61 If the court finds the defendant incompetent but restorable to competency, it may order continued
62 treatment under subsection A of § 19.2-169.2 for additional ~~six~~ 6-month periods, provided a hearing
63 pursuant to subsection E of § 19.2-169.1 is held at the completion of each such period and the defendant
64 continues to be incompetent but restorable to competency in the foreseeable future.

65 C. ~~If~~ *Unless an incompetent defendant is charged with capital murder or the charges against an*
66 *incompetent criminal defendant have not been previously dismissed without prejudice at an earlier time,*
67 charges against an unrestorably incompetent defendant shall be dismissed *without prejudice* on the date
68 upon which his sentence would have expired had he been convicted and received the maximum sentence
69 for the crime charged, or on the date ~~five~~ 5 years from the date of his arrest for such charges,
70 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 court having jurisdiction over the capital murder case may order that*
87 *the defendant receive continued treatment under subsection A of § 19.2-169.2 for additional 6-month*
88 *periods without limitation, provided that (i) a hearing pursuant to subsection E of § 19.2-169.1 is held*
89 *at the completion of each such period, (ii) the defendant remains incompetent, (iii) the court finds*
90 *continued treatment to be medically appropriate, and (iv) the defendant presents a danger to himself or*
91 *others.* #