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## SENATE BILL NO. 177

Senate Amendments in [ ] — January 26, 2004

A BILL to amend and reenact § 19.2-163.7 of the Code of Virginia, relating to counsel in capital cases.

Patron Prior to Engrossment—Senator Stolle

Referred to Committee for Courts of Justice

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

## 1. That § 19.2-163.7 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-163.7. Counsel in capital cases.

In any case in which an indigent defendant is charged with a capital offense, the judge of the circuit court, upon request for the appointment of counsel, shall appoint ~~one or more~~ at least two attorneys from the list or lists established by the Supreme Court and the Public Defender Commission pursuant to § 19.2-163.8 [ *or as otherwise provided in subsection C of § 19.2-163.8* ] to represent the defendant at trial and, if the defendant is sentenced to death, on appeal. In all cases [ *after July 1, 2004,* ] where counsel is [ ~~to be~~ ] appointed under this section [ *after July 1, 2004* ], one of the attorneys appointed shall be from a capital defense unit maintained by the Public Defender Commission; ~~this. [ The capital defense unit attorney shall serve as lead counsel. ]~~ This section shall be construed in conformity with the provisions of § 19.2-163.4. *If prior to indictment the attorney for the Commonwealth declares in writing that the Commonwealth will not seek the death penalty, the capital defense unit attorney may upon motion before the circuit court seek to withdraw as counsel. The circuit court judge having heard the motion to withdraw shall permit the capital defense unit attorney to withdraw and shall appoint another attorney pursuant to the provisions of § 19.2-159.* If the sentence of death is affirmed on appeal, the court shall, within ~~thirty~~ 30 days after the decision of the Supreme Court of Virginia, appoint counsel from the same list, or such other list as the Supreme Court and the Commission may establish, to represent an indigent prisoner under sentence of death in a state habeas corpus proceeding. The Attorney General shall have no standing to object to the appointment of counsel for the petitioner.

ENGROSSED

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