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HOUSE BILL NO. 1186

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 8, 2008)

(Patrons Prior to Substitute—Delegates Melvin and Morrissey [HB 1378])

*A BILL to amend and reenact § 19.2-169.3 of the Code of Virginia, relating to incompetent defendants who committed only misdemeanors.***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. Disposition of the unrestorably incompetent defendant; capital murder charge; referral to Commitment Review Committee.

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 community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee 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 board, authority, or inpatient facility director's or his designee's opinion, the defendant should be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, committed pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, or certified pursuant to § 37.2-806 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 Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or (iii) certified pursuant to § 37.2-806. However, if the court finds that the defendant is incompetent and is likely to remain so for the foreseeable future and the defendant has been charged with a sexually violent offense, as defined in § 37.2-900, he shall be reviewed for commitment pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2. 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 board, authority, or inpatient facility director or his designee, the director or his designee shall so notify the court and make recommendations concerning disposition of the defendant as described in subsection A. 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 in subsection A. 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 any defendant has been charged with a misdemeanor in violation of Article 3 (§ 18.2-95 et seq.) of Chapter 5 of Title 18.2 or Article 5 (§ 18.2-119 et seq.) of Chapter 5 of Title 18.2, other than a misdemeanor charge pursuant to § 18.2-130, and is being treated pursuant to subsection A of § 19.2-169.2, and after 45 days has not been restored to competency, the director of the community service board, behavioral health authority, or the director of the treating inpatient facility, or any of their designees, shall send a report indicating the defendant's status to the court. The report shall also indicate, whether the defendant should be released or committed pursuant to § 37.2-817 or certified pursuant to § 37.2-806. Upon receipt of the report, if the court determines that the defendant is still incompetent, the court shall order that the defendant be released, committed, or certified, and may dismiss the charges against the defendant.*

ED. Unless an incompetent defendant is charged with capital murder or the charges against an incompetent criminal defendant have been previously dismissed, charges against an unrestorably 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.

DE. If the court orders an unrestorably incompetent defendant to be reviewed for commitment pursuant to § 37.2-904, it shall order the attorney for the Commonwealth in the jurisdiction wherein the defendant was charged and the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services to provide the Commitment Review Committee established pursuant to § 37.2-902 with any information relevant to the review, including, but not limited to: (i) a copy of the

60 warrant or indictment, (ii) a copy of the defendant's criminal record, (iii) information about the alleged
61 crime, (iv) a copy of the competency report completed pursuant to § 19.2-169.1, and (v) a copy of the
62 report prepared by the director of the defendant's community services board, behavioral health authority,
63 or treating inpatient facility or his designee pursuant to this section. The court shall further order that the
64 defendant be held in the custody of the Department of Mental Health, Mental Retardation and Substance
65 Abuse Services for secure confinement and treatment until the Commitment Review Committee's and
66 Attorney General's review and any subsequent hearing or trial are completed. If the court receives notice
67 that the Attorney General has declined to file a petition for the commitment of an unrestorably
68 incompetent defendant as a sexually violent predator after conducting a review pursuant to § 37.2-905,
69 the court shall order that the defendant be released, committed pursuant to Article 5 (§ 37.2-814 et seq.)
70 of Chapter 8 of Title 37.2, or certified pursuant to § 37.2-806.

71 *EF.* In any case when an incompetent defendant is charged with capital murder, notwithstanding any
72 other provision of this section, the charge shall not be dismissed and the court having jurisdiction over
73 the capital murder case may order that the defendant receive continued treatment under subsection A of
74 § 19.2-169.2 for additional six-month periods without limitation, provided that (i) a hearing pursuant to
75 subsection E of § 19.2-169.1 is held at the completion of each such period, (ii) the defendant remains
76 incompetent, (iii) the court finds continued treatment to be medically appropriate, and (iv) the defendant
77 presents a danger to himself or others.

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