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HOUSE BILL NO. 1378

Offered January 9, 2008

Prefiled January 9, 2008

A BILL to amend and reenact §§ 19.2-169.2 and 19.2-169.3 of the Code of Virginia, relating to the disposition of incompetent defendants.

Patron—Morrissey

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-169.2 and 19.2-169.3 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-169.2. Disposition when defendant found incompetent.

A. Upon finding pursuant to subsection E of § 19.2-169.1 that the defendant, including a juvenile transferred pursuant to § 16.1-269.1, is incompetent, the court shall order that the defendant receive treatment to restore his competency on an outpatient basis or, if the court specifically finds that the defendant requires inpatient hospital treatment, at a hospital designated by the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services as appropriate for treatment of persons under criminal charge. Any reports submitted pursuant to subsection D of § 19.2-169.1 shall be made available to the director of the community services board or behavioral health authority or his designee or to the director of the treating inpatient facility or his designee. *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, (iii) reviewed for commitment pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, or (iv) certified pursuant to § 37.2-806.*

B. If, at any time after the defendant is ordered to undergo treatment under subsection A of this section, 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 believes the defendant's competency is restored, the director or his designee shall immediately send a report to the court as prescribed in subsection D of § 19.2-169.1. The court shall make a ruling on the defendant's competency according to the procedures specified in subsection E of § 19.2-169.1.

§ 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

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59 under subsection A of § 19.2-169.2 for additional six-month periods, provided a hearing pursuant to
60 subsection E of § 19.2-169.1 is held at the completion of each such period and the defendant continues
61 to be incompetent but restorable to competency in the foreseeable future. *If the defendant has been*
62 *charged with a misdemeanor, other than an offense against person or property involving the intentional*
63 *threat of or the attempted or actual infliction of physical harm, treatment to restore his competency*
64 *shall be limited to 45 days.*

65 *C. If the defendant charged with a misdemeanor, other than an offense against person or property*
66 *involving the intentional threat of or the attempted or actual infliction of physical harm, is not restored*
67 *to competency within 45 days, the court shall dismiss the charges, and order that he be (i) released, or*
68 *(ii) committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2.*

69 *ED.* Unless an incompetent defendant is charged with capital murder or the charges against an
70 incompetent criminal defendant have been previously dismissed, charges against an unrestorably
71 incompetent defendant shall be dismissed on the date upon which his sentence would have expired had
72 he been convicted and received the maximum sentence for the crime charged, or on the date five years
73 from the date of his arrest for such charges, whichever is sooner.

74 *DE.* If the court orders an unrestorably incompetent defendant to be reviewed for commitment
75 pursuant to § 37.2-904, it shall order the attorney for the Commonwealth in the jurisdiction wherein the
76 defendant was charged and the Commissioner of the Department of Mental Health, Mental Retardation
77 and Substance Abuse Services to provide the Commitment Review Committee established pursuant to
78 § 37.2-902 with any information relevant to the review, including, but not limited to: (i) a copy of the
79 warrant or indictment, (ii) a copy of the defendant's criminal record, (iii) information about the alleged
80 crime, (iv) a copy of the competency report completed pursuant to § 19.2-169.1, and (v) a copy of the
81 report prepared by the director of the defendant's community services board, behavioral health authority,
82 or treating inpatient facility or his designee pursuant to this section. The court shall further order that the
83 defendant be held in the custody of the Department of Mental Health, Mental Retardation and Substance
84 Abuse Services for secure confinement and treatment until the Commitment Review Committee's and
85 Attorney General's review and any subsequent hearing or trial are completed. If the court receives notice
86 that the Attorney General has declined to file a petition for the commitment of an unrestorably
87 incompetent defendant as a sexually violent predator after conducting a review pursuant to § 37.2-905,
88 the court shall order that the defendant be released, committed pursuant to Article 5 (§ 37.2-814 et seq.)
89 of Chapter 8 of Title 37.2, or certified pursuant to § 37.2-806.

90 *EF.* In any case when an incompetent defendant is charged with capital murder, notwithstanding any
91 other provision of this section, the charge shall not be dismissed and the court having jurisdiction over
92 the capital murder case may order that the defendant receive continued treatment under subsection A of
93 § 19.2-169.2 for additional six-month periods without limitation, provided that (i) a hearing pursuant to
94 subsection E of § 19.2-169.1 is held at the completion of each such period, (ii) the defendant remains
95 incompetent, (iii) the court finds continued treatment to be medically appropriate, and (iv) the defendant
96 presents a danger to himself or others.

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