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SENATE BILL NO. 369

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 16, 2008)

(Patrons Prior to Substitute—Senators Watkins and McDougle [SB 111])

A BILL to amend the Code of Virginia by adding a section numbered 19.2-264.3:1.3, relating to the appointment of experts to assist in the defense of indigent defendants in capital cases.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 19.2-264.3:1.3 as follows:

§ 19.2-264.3:1.3. Expert assistance for indigent defendants in capital cases.

A. In any case in which the defendant (i) is charged with a capital offense and (ii) is found by the court to be financially unable to pay for expert assistance, the defendant or his attorney may move for the appointment of a qualified expert to assist in the preparation of the defendant's defense. The motion shall be heard ex parte as soon as practicable and, after a hearing upon the motion, the court may order the appointment of a qualified expert. Any expert appointed pursuant to this subsection shall be compensated in accordance with § 19.2-332.

B. Any report, analysis, evaluation, or other work product made by an expert appointed pursuant to subsection A shall be subject to attorney-client privilege. Nothing in this subsection shall affect the duty of the defendant to adequately and fully provide discovery as provided under Rule 3A:11 of the Rules of the Supreme Court.

C. This section does not apply to the appointment of a mental health expert pursuant to § 19.2-264.3:1 or 19.2-264.3:1.2.

SENATE SUBSTITUTE

SB369S1