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**SENATE BILL NO. 939**

Offered January 14, 2009

Prefiled January 7, 2009

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.*

Patron—Watkins

Referred to Committee for Courts of Justice

**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 in circuit court for the appointment of a qualified expert to assist in the preparation of the defendant's defense. Notice of the defendant's motion shall be provided to the presiding judge who shall designate a judge in the same judicial circuit who is not presiding in the case to hear the defendant's motion. On request of the defendant, with notice to the attorney for the Commonwealth, the presiding judge shall designate one judge within the circuit to hear all ex parte requests for expert assistance in the defendant's case. The motion for the appointment of a qualified expert shall be in writing, filed under seal, and shall be heard ex parte as soon as practicable by the designated judge. 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.*

*All ex parte hearings conducted under this section shall be on the record, and the record of the hearings, together with all papers filed and orders entered in connection with ex parte requests for expert assistance, shall be kept under seal as part of the record of the case.*

*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.*

INTRODUCED

SB939