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HOUSE JOINT RESOLUTION NO. 626

Offered January 12, 2011

Prefiled January 11, 2011

Directing the Virginia State Crime Commission to study the disposition of unrestorably incompetent defendants. Report.

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Referred to Committee on Rules

WHEREAS, the trial of an incompetent defendant in a criminal case violates the constitutional right of the defendant to due process of law as recognized by the United States Supreme Court in Pate v. Robinson, 383 U.S. 375, 86 S. Ct. 836, 15 L. Ed. 2d 815 (1966) and Godinez v. Moran, 509 U.S. 389, 113 S. Ct. 2680, 125 L. Ed. 2d 321 (1993); and

WHEREAS, Virginia has enacted a statutory scheme designed to protect the constitutional rights of incompetent defendants located at Chapter 11 (19.2-167 et seq.) of Title 19.2; and

WHEREAS, since fiscal year 2006, the Department of Behavioral Health and Developmental Services has reported to the courts that the following number of defendants were found to be unrestorably incompetent to stand trial: (i) 77 in fiscal year 2006, (ii) 102 in fiscal year 2007, (iii) 99 in fiscal year 2008, (iv) 85 in fiscal year 2009, (v) 84 in fiscal year 2010, and (vi) 37 to date in fiscal year 2011; and

WHEREAS, pursuant to § 19.2-169.3, a court has several options for the disposition of an unrestorably incompetent defendant, however not all options are available to the court for each defendant depending on the underlying reason for the incompetency; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia State Crime Commission be directed to study the disposition of unrestorably incompetent defendants.

In conducting its study, the Virginia State Crime Commission shall review the statutory options available for the disposition of unrestorably incompetent defendants, including (i) release, (ii) involuntary civil commitment, (iii) involuntary civil commitment as a sexually violent predator, and (iv) certification to a training center. The Commission shall assess whether the available disposition options are adequate to deal with all defendants who are found to be unrestorably incompetent regardless of the underlying reason for the incompetency. The Commission shall determine whether additional disposition options need to be made available to the court that continue to protect the due process rights of incompetent defendants, while also ensuring the safety of the public.

Technical assistance shall be provided to the Virginia State Crime Commission by the Department of Behavioral Health and Developmental Services. All agencies of the Commonwealth shall provide assistance to the Commission for this study, upon request.

The Virginia State Crime Commission shall complete its meetings by November 30, 2011, and the chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2012 Regular Session of the General Assembly. The executive summary shall state whether the Virginia State Crime Commission intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

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