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HOUSE BILL NO. 1365

Offered January 9, 2013

Prefiled December 6, 2012

A *BILL to amend and reenact § 19.2-175 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-168.2, relating to judicial appointment of mental health experts in cases not involving insanity as a defense or competency to stand trial.*

Patrons—Morrissey

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-175 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-168.2 as follows:

§ 19.2-168.2. *Appointment of mental health experts in criminal cases not involving insanity defense or competency to stand trial.*

A. *In a felony criminal case for an alleged crime other than a violation of § 18.2-31, the attorney for the Commonwealth or the defendant may, at least 60 days prior to trial, move the court to require a mental health evaluation of the defendant. Upon such motion, and for good cause shown, the court shall conduct a hearing to consider evidence of mental health issues relevant to the trial or sentencing of the defendant when consideration of such issues is not otherwise provided for and authorized by § 19.2-168.1, 19.2-169.1, 19.2-169.5, or 19.2-301.*

B. *Following a particularized showing of evidence by the party making the motion and upon a finding by the court of probable cause that the mental health of the defendant would be a significant factor in his trial or at sentencing, the court shall appoint a mental health expert qualified pursuant to subsection A of § 19.2-169.5 to conduct the evaluation. In the order of appointment, the court shall (i) specify the issue or issues the expert is to evaluate, (ii) set a date for submission of the report, and (iii) designate to whom the expert shall submit the report. The court shall also order either or both parties to provide information to the expert regarding the necessity of the evaluation and any relevant information in their possession that may assist in the evaluation of the defendant.*

§ 19.2-175. Compensation of experts.

Each psychiatrist, clinical psychologist or other expert appointed by the court to render professional service pursuant to § 19.2-168.1, 19.2-168.2, 19.2-169.1, 19.2-169.5, 19.2-182.8, 19.2-182.9, 19.2-264.3:1, 19.2-264.3:3 or 19.2-301, who is not regularly employed by the Commonwealth of Virginia except by the University of Virginia School of Medicine and the Medical College of Virginia Commonwealth University, shall receive a reasonable fee for such service. For any psychiatrist, clinical psychologist, or other expert appointed by the court to render such professional services who is regularly employed by the Commonwealth of Virginia, except by the University of Virginia School of Medicine or the Medical College of Virginia Commonwealth University, the fee shall be paid only for professional services provided during nonstate hours that have been approved by his employing agency as being beyond the scope of his state employment duties. The fee shall be determined in each instance by the court that appointed the expert, in accordance with guidelines established by the Supreme Court after consultation with the Department of Behavioral Health and Developmental Services. Except in capital murder cases the fee shall not exceed \$750, but in addition if any such expert is required to appear as a witness in any hearing held pursuant to such sections, he shall receive mileage and a fee of \$100 for each day during which he is required so to serve. An itemized account of expense, duly sworn to, must be presented to the court, and when allowed shall be certified to the Supreme Court for payment out of the state treasury, and be charged against the appropriations made to pay criminal charges. Allowance for the fee and for the per diem authorized shall also be made by order of the court, duly certified to the Supreme Court for payment out of the appropriation to pay criminal charges.

INTRODUCED

HB1365