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HOUSE BILL NO. 582

Offered January 13, 2016

Prefiled January 11, 2016

A *BILL to amend and reenact §§ 19.2-168.1, 19.2-169.1, and 19.2-169.5 of the Code of Virginia, relating to qualifications of forensic evaluators for certain criminal defendants.*

 Patron—Yost

 Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-168.1, 19.2-169.1, and 19.2-169.5 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-168.1. Evaluation on motion of the Commonwealth after notice.

A. If the attorney for the defendant gives notice pursuant to § 19.2-168, and the Commonwealth thereafter seeks an evaluation of the defendant's sanity at the time of the offense, the court shall appoint one or more qualified mental health experts to perform such an evaluation. The court shall order the defendant to submit to such an evaluation and advise the defendant on the record in court that a refusal to cooperate with the Commonwealth's expert could result in exclusion of the defendant's expert evidence. The qualification of the experts shall be governed by subsection A of § 19.2-169.5. The location of the evaluation shall be governed by subsection B of § 19.2-169.5. The attorney for the Commonwealth shall be responsible for providing the experts the information specified in subsection C of § 19.2-169.5. After performing their evaluation, the experts shall report their findings and opinions, and provide copies of psychiatric, psychological, medical or other records obtained during the course of the evaluation to the attorneys for the Commonwealth and the defense. *The evaluator shall also send a redacted copy of the report removing references to the defendant's name, date of birth, case number, and court of jurisdiction to the Commissioner of Behavioral Health and Developmental Services for the purpose of peer review.*

B. If the court finds, after hearing evidence presented by the parties, that the defendant has refused to cooperate with an evaluation requested by the Commonwealth, it may admit evidence of such refusal or, in the discretion of the court, bar the defendant from presenting expert psychiatric or psychological evidence at trial on the issue of his sanity at the time of the offense.

§ 19.2-169.1. Raising question of competency to stand trial or plead; evaluation and determination of competency.

A. Raising competency issue; appointment of evaluators. — If, at any time after the attorney for the defendant has been retained or appointed and before the end of trial, the court finds, upon hearing evidence or representations of counsel for the defendant or the attorney for the Commonwealth, that there is probable cause to believe that the defendant, whether a juvenile transferred pursuant to § 16.1-269.1 or adult, lacks substantial capacity to understand the proceedings against him or to assist his attorney in his own defense, the court shall order that a competency evaluation be performed by at least one psychiatrist or clinical psychologist who is ~~qualified by training and experience in~~ (i) ~~has performed forensic evaluation~~ *has successfully completed forensic evaluation training recognized by the Commissioner of Behavioral Health and Developmental Services;* (ii) *has demonstrated competence to perform forensic evaluations;* and (iv) *is included on a list of approved evaluators maintained by the Commissioner.*

B. Location of evaluation. — The evaluation shall be performed on an outpatient basis at a mental health facility or in jail unless the court specifically finds that outpatient evaluation services are unavailable or unless the results of outpatient evaluation indicate that hospitalization of the defendant for evaluation on competency is necessary. If the court finds that hospitalization is necessary, the court, under authority of this subsection, may order the defendant sent to a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for evaluations of persons under criminal charge. The defendant shall be hospitalized for such time as the director of the hospital deems necessary to perform an adequate evaluation of the defendant's competency, but not to exceed 30 days from the date of admission to the hospital.

C. Provision of information to evaluators. — The court shall require the attorney for the Commonwealth to provide to the evaluators appointed under subsection A any information relevant to the evaluation, including, but not limited to (i) a copy of the warrant or indictment; (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the defendant, and the judge ordering the evaluation; (iii) information about the alleged crime; and (iv) a summary of the reasons for the

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59 evaluation request. The court shall require the attorney for the defendant to provide any available
60 psychiatric records and other information that is deemed relevant. The court shall require that
61 information be provided to the evaluator within 96 hours of the issuance of the court order pursuant to
62 this section.

63 D. The competency report. — Upon completion of the evaluation, the evaluators shall promptly
64 submit a report in writing to the court and the attorneys of record concerning (i) the defendant's capacity
65 to understand the proceedings against him; (ii) his ability to assist his attorney; and (iii) his need for
66 treatment in the event he is found incompetent but restorable, or incompetent for the foreseeable future.
67 If a need for restoration treatment is identified pursuant to clause (iii), the report shall state whether
68 inpatient or outpatient treatment is recommended. No statements of the defendant relating to the time
69 period of the alleged offense shall be included in the report. *The evaluator shall also send a redacted*
70 *copy of the report removing references to the defendant's name, date of birth, case number, and court of*
71 *jurisdiction to the Commissioner of Behavioral Health and Developmental Services for the purpose of*
72 *peer review.*

73 E. The competency determination. — After receiving the report described in subsection D, the court
74 shall promptly determine whether the defendant is competent to stand trial. A hearing on the defendant's
75 competency is not required unless one is requested by the attorney for the Commonwealth or the
76 attorney for the defendant, or unless the court has reasonable cause to believe the defendant will be
77 hospitalized under § 19.2-169.2. If a hearing is held, the party alleging that the defendant is incompetent
78 shall bear the burden of proving by a preponderance of the evidence the defendant's incompetency. The
79 defendant shall have the right to notice of the hearing, the right to counsel at the hearing and the right
80 to personally participate in and introduce evidence at the hearing.

81 The fact that the defendant claims to be unable to remember the time period surrounding the alleged
82 offense shall not, by itself, bar a finding of competency if the defendant otherwise understands the
83 charges against him and can assist in his defense. Nor shall the fact that the defendant is under the
84 influence of medication bar a finding of competency if the defendant is able to understand the charges
85 against him and assist in his defense while medicated.

86 **§ 19.2-169.5. Evaluation of sanity at the time of the offense; disclosure of evaluation results.**

87 A. Raising issue of sanity at the time of offense; appointment of evaluators. — If, at any time before
88 trial, the court finds, upon hearing evidence or representations of counsel for the defendant, that there is
89 probable cause to believe that the defendant's sanity will be a significant factor in his defense and that
90 the defendant is financially unable to pay for expert assistance, the court shall appoint one or more
91 qualified mental health experts to evaluate the defendant's sanity at the time of the offense and, where
92 appropriate, to assist in the development of an insanity defense. Such mental health expert shall be (i) a
93 psychiatrist; ~~or a clinical psychologist; or an individual with a doctorate degree in clinical psychology~~
94 ~~who (i) has performed forensic examinations, (ii) has successfully completed forensic evaluation training~~
95 ~~as approved recognized by the Commissioner of Behavioral Health and Developmental Services and (ii)~~
96 ~~qualified by specialized training and experience, (iii) has demonstrated competence to perform forensic~~
97 ~~evaluations, and (iv) is included on a list of approved evaluators maintained by the Commissioner.~~ The
98 defendant shall not be entitled to a mental health expert of his own choosing or to funds to employ such
99 expert.

100 B. Location of evaluation. — The evaluation shall be performed on an outpatient basis, at a mental
101 health facility or in jail, unless the court specifically finds that outpatient services are unavailable, or
102 unless the results of the outpatient evaluation indicate that hospitalization of the defendant for further
103 evaluation of his sanity at the time of the offense is necessary. If either finding is made, the court, under
104 authority of this subsection, may order that the defendant be sent to a hospital designated by the
105 Commissioner of Behavioral Health and Developmental Services as appropriate for evaluation of the
106 defendant under criminal charge. The defendant shall be hospitalized for such time as the director of the
107 hospital deems necessary to perform an adequate evaluation of the defendant's sanity at the time of the
108 offense, but not to exceed 30 days from the date of admission to the hospital.

109 C. Provision of information to evaluator. — The court shall require the party making the motion for
110 the evaluation, and such other parties as the court deems appropriate, to provide to the evaluators
111 appointed under subsection A any information relevant to the evaluation, including, but not limited to (i)
112 copy of the warrant or indictment; (ii) the names and addresses of the attorney for the Commonwealth,
113 the attorney for the defendant and the judge who appointed the expert; (iii) information pertaining to the
114 alleged crime, including statements by the defendant made to the police and transcripts of preliminary
115 hearings, if any; (iv) a summary of the reasons for the evaluation request; (v) any available psychiatric,
116 psychological, medical or social records that are deemed relevant; and (vi) a copy of the defendant's
117 criminal record, to the extent reasonably available.

118 D. The evaluators shall prepare a full report concerning the defendant's sanity at the time of the
119 offense, including whether he may have had a significant mental disease or defect which rendered him
120 insane at the time of the offense. The report shall be prepared within the time period designated by the

121 court, said period to include the time necessary to obtain and evaluate the information specified in
122 subsection C.

123 E. Disclosure of evaluation results. — The report described in subsection D shall be sent solely to
124 the attorney for the defendant and shall be deemed to be protected by the lawyer-client privilege.
125 However, the Commonwealth shall be given the report in all felony cases, the results of any other
126 evaluation of the defendant's sanity at the time of the offense, and copies of psychiatric, psychological,
127 medical, or other records obtained during the course of any such evaluation, after the attorney for the
128 defendant gives notice of an intent to present psychiatric or psychological evidence pursuant to
129 § 19.2-168. *In addition, in all cases, the evaluator shall send a redacted copy of the report removing*
130 *references to the defendant's name, date of birth, case number, and court of jurisdiction to the*
131 *Commissioner of Behavioral Health and Developmental Services for the purpose of peer review.*

132 F. In any case where the defendant obtains his own expert to evaluate the defendant's sanity at the
133 time of the offense, the provisions of subsections D and E, relating to the disclosure of the evaluation
134 results, shall apply.