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SENATE BILL NO. 797

Offered January 11, 2017

Prefiled October 4, 2016

A BILL to amend and reenact § 19.2-169.1 of the Code of Virginia, relating to competency to stand trial; evaluations.

Patron—McDougle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-169.1 of the Code of Virginia is amended and reenacted as follows:

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

A. 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 (i) has performed forensic evaluations; (ii) has successfully completed forensic evaluation training recognized by the Commissioner of Behavioral Health and Developmental Services; (iii) has demonstrated to the Commissioner competence to perform forensic evaluations; and (iv) is included on a list of approved evaluators maintained by the Commissioner.

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

D. Upon completion of the evaluation, the evaluators shall promptly submit a report in writing to the court and the attorneys of record concerning (i) the defendant's capacity to understand the proceedings against him; (ii) his ability to assist his attorney; and (iii) his need for treatment in the event he is found incompetent but restorable, or incompetent for the foreseeable future. If a need for restoration treatment is identified pursuant to clause (iii), the report shall state whether inpatient or outpatient treatment is recommended. No statements of the defendant relating to the time period of the alleged offense shall be included in the report. 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 to establish and maintain the list of approved evaluators described in subsection A.

E. After receiving the report described in subsection D, *and before the court makes a determination of competency to stand trial, the court, on its own motion or that of either party, may order an additional evaluation and report of the defendant's competency to be conducted and completed as set out in this section.*

After receipt of all reports, the court shall promptly determine whether the defendant is competent to stand trial. A hearing on the defendant's competency is not required unless one is requested by the attorney for the Commonwealth or the attorney for the defendant, or unless the court has reasonable cause to believe the defendant will be hospitalized under § 19.2-169.2. If a hearing is held, the party

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59 alleging that the defendant is incompetent shall bear the burden of proving by a preponderance of the
60 evidence the defendant's incompetency. The defendant shall have the right to notice of the hearing, the
61 right to counsel at the hearing and the right to personally participate in and introduce evidence at the
62 hearing.

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