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HOUSE BILL NO. 52

House Amendments in [] — February 8, 2018

A BILL to amend and reenact §§ 19.2-169.1 and 19.2-169.5 of the Code of Virginia, relating to competency and sanity evaluations; location of evaluation.

Patron Prior to Engrossment—Delegate Hope

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

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

§ 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 (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. 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 [unless the defendant is in the custody of the Commissioner of Behavioral Health and Developmental Services pursuant to § 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, 19.2-182.9, or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2] .

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 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. The competency report.

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. The competency determination.

After receiving the report described in subsection D, the court shall promptly determine whether the

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59 defendant is competent to stand trial. A hearing on the defendant's competency is not required unless
60 one is requested by the attorney for the Commonwealth or the attorney for the defendant, or unless the
61 court has reasonable cause to believe the defendant will be hospitalized under § 19.2-169.2. If a hearing
62 is held, the party alleging that the defendant is incompetent shall bear the burden of proving by a
63 preponderance of the evidence the defendant's incompetency. The defendant shall have the right to
64 notice of the hearing, the right to counsel at the hearing and the right to personally participate in and
65 introduce evidence at the hearing.

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

71 **§ 19.2-169.5. Evaluation of sanity at the time of the offense; disclosure of evaluation results.**

72 A. Raising issue of sanity at the time of offense; appointment of evaluators.

73 If, at any time before trial, the court finds, upon hearing evidence or representations of counsel for
74 the defendant, that there is probable cause to believe that the defendant's sanity will be a significant
75 factor in his defense and that the defendant is financially unable to pay for expert assistance, the court
76 shall appoint one or more qualified mental health experts to evaluate the defendant's sanity at the time
77 of the offense and, where appropriate, to assist in the development of an insanity defense. Such mental
78 health expert shall be a psychiatrist or a clinical psychologist who (i) has performed forensic
79 examinations, (ii) has successfully completed forensic evaluation training recognized by the
80 Commissioner of Behavioral Health and Developmental Services, (iii) has demonstrated to the
81 Commissioner competence to perform forensic evaluations, and (iv) is included on a list of approved
82 evaluators maintained by the Commissioner. The defendant shall not be entitled to a mental health
83 expert of his own choosing or to funds to employ such expert.

84 B. Location of evaluation.

85 The evaluation shall be performed on an outpatient basis, at a mental health facility or in jail; ~~unless~~
86 ~~the court specifically finds that outpatient services are unavailable, or unless the results of the outpatient~~
87 ~~evaluation indicate that hospitalization of the defendant for further evaluation of his sanity at the time of~~
88 ~~the offense is necessary. If either finding is made, the court, under authority of this subsection, may~~
89 ~~order that the defendant be sent to a hospital designated by the Commissioner of Behavioral Health and~~
90 ~~Developmental Services as appropriate for evaluation of the defendant under criminal charge. The~~
91 ~~defendant shall be hospitalized for such time as the director of the hospital deems necessary to perform~~
92 ~~an adequate evaluation of the defendant's sanity at the time of the offense, but not to exceed 30 days~~
93 ~~from the date of admission to the hospital [unless the defendant is in the custody of the Commissioner~~
94 ~~of Behavioral Health and Developmental Services pursuant to § 19.2-169.2, 19.2-169.6, 19.2-182.2,~~
95 ~~19.2-182.3, 19.2-182.8, 19.2-182.9, or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2] .~~

96 C. Provision of information to evaluator.

97 The court shall require the party making the motion for the evaluation, and such other parties as the
98 court deems appropriate, to provide to the evaluators appointed under subsection A any information
99 relevant to the evaluation, including, but not limited to (i) copy of the warrant or indictment; (ii) the
100 names and addresses of the attorney for the Commonwealth, the attorney for the defendant and the judge
101 who appointed the expert; (iii) information pertaining to the alleged crime, including statements by the
102 defendant made to the police and transcripts of preliminary hearings, if any; (iv) a summary of the
103 reasons for the evaluation request; (v) any available psychiatric, psychological, medical or social records
104 that are deemed relevant; and (vi) a copy of the defendant's criminal record, to the extent reasonably
105 available.

106 D. The evaluators shall prepare a full report concerning the defendant's sanity at the time of the
107 offense, including whether he may have had a significant mental disease or defect which rendered him
108 insane at the time of the offense. The report shall be prepared within the time period designated by the
109 court, said period to include the time necessary to obtain and evaluate the information specified in
110 subsection C.

111 E. Disclosure of evaluation results.

112 The report described in subsection D shall be sent solely to the attorney for the defendant and shall
113 be deemed to be protected by the lawyer-client privilege. However, the Commonwealth shall be given
114 the report in all felony cases, the results of any other evaluation of the defendant's sanity at the time of
115 the offense, and copies of psychiatric, psychological, medical, or other records obtained during the
116 course of any such evaluation, after the attorney for the defendant gives notice of an intent to present
117 psychiatric or psychological evidence pursuant to § 19.2-168. In addition, in all cases, the evaluator shall
118 send a redacted copy of the report removing references to the defendant's name, date of birth, case
119 number, and court of jurisdiction to the Commissioner of Behavioral Health and Developmental Services
120 for the purpose of peer review to establish and maintain the list of approved evaluators described in

121 subsection A.

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

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