

VIRGINIA ACTS OF ASSEMBLY -- 2021 SPECIAL SESSION I

CHAPTER 312

An Act to amend the Code of Virginia by adding a section numbered 19.2-169.3:1, relating to disposition of the unrestorably incompetent defendant; capital murder charge; inpatient custody of the Commissioner of the Department of Behavioral Health and Developmental Services.

[S 1272]

Approved March 24, 2021

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 19.2-169.3:1 as follows:

§ 19.2-169.3:1. Disposition of the unrestorably incompetent defendant; capital murder charge; inpatient custody of the Commissioner.

A. When a defendant charged with capital murder has been determined to be unrestorably incompetent, pursuant to subsections D and F of § 19.2-169.3, the court may commit such defendant to the inpatient custody of the Commissioner of the Department of Behavioral Health and Developmental Services under this section, provided that such defendant has remained unrestorably incompetent for a period of five years.

B. After a capital murder defendant has been committed to the inpatient custody of the Commissioner of the Department of Behavioral Health and Developmental Services under subsection A, the Commissioner may make interfacility transfers and treatment and management decisions regarding such defendant after obtaining prior approval of or review by the committing court.

C. The Commissioner of the Department of Behavioral Health and Developmental Services shall notify the committing court, the attorney for the Commonwealth in the committing jurisdiction, and the defendant's counsel in writing of recommended changes in a defendant's course of treatment that will involve authorization for the defendant to leave the grounds of the hospital in which he is confined. Upon receipt of such notice, the court shall hold a hearing to determine whether the recommendation of the Commissioner is authorized by the court.

D. The Commissioner of the Department of Behavioral Health and Developmental Services may delegate any of the duties and powers imposed on or granted to him by this section to an administrative board composed of persons with demonstrated expertise in such matters. The Department of Behavioral Health and Developmental Services shall assist the board in its administrative and technical duties. Members of the board shall exercise their powers and duties without compensation and shall be immune from personal liability while acting within the scope of their duties except for intentional misconduct.

E. Copies of all orders and notices issued pursuant to this chapter shall be sent to the Commissioner of the Department of Behavioral Health and Developmental Services.

F. Nothing in this section shall alter the requirement that hearings be held pursuant to subsection F of § 19.2-169.3.