

23104864D

HOUSE BILL NO. 2434

Offered January 19, 2023

A BILL to amend and reenact § 19.2-271.6 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 8 of Title 37.2 an article numbered 5.1, consisting of a section numbered 37.2-828.1, relating to orders for involuntary outpatient evaluations and services; evidence of defendant's mental condition.

 Patron—Bell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-271.6 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 8 of Title 37.2 an article numbered 5.1, consisting of a section numbered 37.2-828.1, as follows:

§ 19.2-271.6. Evidence of defendant's mental condition admissible; notice to Commonwealth.

A. For the purposes of this section:

"Autism spectrum disorder" means the same as that term is defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

"Developmental disability" means the same as that term is defined in § 37.2-100.

"Intellectual disability" means the same as that term is defined in § 37.2-100.

"Mental illness" means a disorder of thought, mood, perception, or orientation that significantly impairs judgment or capacity to recognize reality.

B. In any criminal case, evidence offered by the defendant concerning the defendant's mental condition at the time of the alleged offense, including expert testimony, is relevant, is not evidence concerning an ultimate issue of fact, and shall be admitted if such evidence (i) tends to show the defendant did not have the *requisite specific* intent required for the offense charged and (ii) is otherwise admissible pursuant to the general rules of evidence. For purposes of this section, to establish the underlying mental condition the defendant must show that his condition existed at the time of the offense and that the condition satisfies the diagnostic criteria for ~~(i)~~ (a) a mental illness, ~~(ii)~~ (b) a developmental disability or intellectual disability, or ~~(iii)~~ (c) autism spectrum disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

If a defendant intends to introduce evidence pursuant to this section, he, or his counsel, shall give notice in writing to the attorney for the Commonwealth, at least 60 days prior to his trial in circuit court, or at least 21 days prior to trial in general district court or juvenile and domestic relations district court, or at least 14 days if the trial date is set within 21 days of last court appearance, of his intention to present such evidence. In the event that such notice is not given, and the person proffers such evidence at his trial as a defense, then the court may in its discretion either allow the Commonwealth a continuance or, under appropriate circumstances, bar the defendant from presenting such evidence. The period of any such continuance shall not be counted for speedy trial purposes under § 19.2-243.

If a defendant intends to introduce expert testimony pursuant to this section, the defendant shall provide the Commonwealth with ~~(a)~~ (1) any written report of the expert witness setting forth the witness's opinions and the bases and reasons for those opinions, or, if there is no such report, a written summary of the expected expert testimony setting forth the witness's opinions and bases and reasons for those opinions, and ~~(b)~~ (2) the witness's qualifications and contact information.

C. The defendant, when introducing evidence pursuant to this section, shall permit the Commonwealth to inspect, copy, or photograph any written reports of any physical or mental examination of the accused made in connection with the case, provided that no statement made by the accused in the course of such an examination disclosed pursuant to this subsection shall be used by the Commonwealth in its case in chief, whether the examination was conducted with or without the consent of the accused.

D. Nothing in this section shall prevent the Commonwealth from introducing relevant, admissible evidence, including expert testimony, in rebuttal to evidence introduced by the defendant pursuant to this section.

E. A court may enter an emergency custody order in accordance with § 37.2-808 for a defendant who has introduced evidence of his mental condition at the time of the alleged offense pursuant to this section if the defendant meets the criteria set forth in subsection A of § 37.2-808. Nothing in this section shall be construed as limiting the authority of the court ~~from entering~~ to enter an emergency

INTRODUCED

HB2434

59 custody order pursuant to in accordance with subsection A of § 37.2-808.

60 F. The court may enter an order for outpatient evaluation of a person who has been found not guilty
61 of any offense following admission of evidence of his mental condition at the time of the alleged offense
62 in accordance with this section if the court finds that probable cause exists to believe that the person
63 meets the criteria set forth in subsection D of § 37.2-828.1. When determining whether such probable
64 cause exists, the court may consider any evidence admitted pursuant to this section and any information
65 described in subsection C of § 37.2-817.

66 G. An order for outpatient evaluation entered pursuant to subsection F shall (i) direct the community
67 services board or behavioral health authority serving the jurisdiction in which the person is located to
68 designate a person who is skilled in the diagnosis and treatment of mental illness, developmental and
69 intellectual disabilities, and autism spectrum disorder and meets the requirements set forth in subsection
70 A of § 37.2-815 to conduct an evaluation of the person to determine whether the person meets the
71 criteria for an order for outpatient services set forth in subsection D of § 37.2-828.1 and (ii) direct the
72 person who is the subject of the order to present himself at the time and place specified for the
73 evaluation and to participate in the evaluation. The evaluation shall be conducted in private, on an
74 outpatient basis, and within 72 hours of the entry of the order for outpatient evaluation. The evaluation
75 shall be conducted in person or, if that is not practicable, via a two-way electronic video and audio
76 communication system as authorized in § 37.2-804.1.

77 H. Nothing in this section shall be construed to affect the requirements for a defense of insanity
78 pursuant to Chapter 11 (§ 19.2-167 et seq.).

79 G. I. Nothing in this section shall be construed as permitting the introduction of evidence of
80 voluntary intoxication.

81 Article 5.1.

82 Involuntary Outpatient Services for Certain Persons Found Not Guilty.

83 § 37.2-828.1. Orders for outpatient evaluation and outpatient services.

84 A. As used in this section:

85 "Community services board" includes a behavioral health authority established pursuant to Chapter
86 6 (§ 37.2-600 et seq.).

87 "Mental condition" means (i) mental illness as defined in § 19.2-271.6, (ii) a developmental or
88 intellectual disability, or (iii) autism spectrum disorder as defined in § 19.2-271.6.

89 B. If an evaluator conducting an outpatient evaluation pursuant to an order entered in accordance
90 with subsection G of § 19.2-271.6 determines that the person meets the criteria set forth in subsection
91 D, the community services board serving the jurisdiction in which the person is located shall (i) prepare
92 an outpatient services plan, which shall include the items set forth in clauses (i) through (iv) of
93 subsection F of § 37.2-817.01, and (ii) promptly file a petition for an order for outpatient services in the
94 district court for the jurisdiction in which the person is located.

95 C. Upon receipt of a petition filed pursuant to subsection B, the court shall schedule a hearing on
96 an expedited basis, giving the matter priority over other civil matters before the court. The person who
97 is the subject of the petition shall be provided with written notice of his rights in accordance with
98 subsection D of § 37.2-814, and the provisions of subsections C and F of § 37.2-814 shall apply.

99 D. The court shall enter an order for outpatient services upon finding, by clear and convincing
100 evidence, that (i) the person was found not guilty of any offense after a trial at which evidence of his
101 mental condition was admitted in accordance with § 19.2-271.6; (ii) the person has a mental condition;
102 (iii) the person engaged in conduct that created a risk of harm to himself or others, which may be
103 evidenced by recent behavior causing, attempting to cause, or threatening to cause harm, including the
104 alleged conduct that gave rise to the charges of which the person was found not guilty, and any other
105 relevant information; (iv) the conduct was related to the person's mental condition; (v) the person is in
106 need of outpatient treatment to prevent a relapse or deterioration of his mental condition that would be
107 likely to result in harm to himself or others in the future; and (vi) there is a reasonable likelihood that
108 community-based services for the person's mental condition will reduce the risk of harm. The duration
109 of the order for outpatient services shall not exceed 180 days unless the order is continued in
110 accordance with clause (ii) of subsection F. In prescribing the terms of the order, including its length,
111 the court shall consider the impact that the order may have on the person's opportunities and
112 obligations, including education and employment.

113 E. The order for outpatient services shall (i) include the outpatient services plan prepared pursuant
114 to subsection B and (ii) require the community services board that prepared the plan to monitor the
115 implementation of the plan and the person's progress and adherence to the plan in the same manner
116 that the community services board monitors implementation of mandatory outpatient treatment plans and
117 the person's progress and adherence to a mandatory outpatient treatment plan pursuant to subsections B
118 and C § 37.2-817.1.

119 F. Any of the persons described in clauses (i) through (vi) of subsection D of § 37.2-817.1 may
120 petition for review of an order for outpatient services and outpatient services plan entered pursuant to

121 *this section. The provisions of subsections D through G of § 37.2-817.1 governing the review of*
122 *comprehensive mandatory outpatient treatment plans shall apply to reviews of orders for outpatient*
123 *services and outpatient services plans. A court may (i) rescind an order for outpatient services in*
124 *accordance with the procedures set forth in § 37.2-817.3 or (ii) continue an order for outpatient*
125 *services in accordance with the procedures set forth in § 37.2-817.4 if the court determines that the*
126 *person continues to meet the criteria set forth in subsection D.*