VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend the Code of Virginia by adding in Chapter 11 of Title 16.1 an article numbered 18, consisting of sections numbered 16.1-356 through 16.1-361, relating to juvenile competency to stand trial.

[H 2043]

Approved

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 11 of Title 16.1 an article numbered 18, consisting of sections numbered 16.1-356 through 16.1-361, as follows:

Article 18.

Juvenile Competency.

§ 16.1-356. Raising question of competency to stand trial; evaluation and determination of competency.

A. If, at any time after the attorney for the juvenile has been retained or appointed pursuant to a delinquency proceeding and before the end of trial, the court finds, sua sponte or upon hearing evidence or representations of counsel for the juvenile or the attorney for the Commonwealth, that there is probable cause to believe that the juvenile 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, clinical psychologist, or licensed clinical social worker who is qualified by training and experience in the forensic evaluation of juveniles.

The Commissioner of Mental Health, Mental Retardation and Substance Abuse Services shall approve the training and qualifications for individuals authorized to conduct juvenile competency evaluations and provide restoration services to juveniles pursuant to this article. The Commissioner shall also provide all juvenile courts with a list of guidelines for the court to use in the determination of qualifying individuals as experts in matters relating to juvenile competency and restoration.

B. The evaluation shall be performed on an outpatient basis at a community services board or behavioral health authority, juvenile detention home or juvenile justice facility unless the court specifically finds that (i) the results of the outpatient competency evaluation indicate that hospitalization of the juvenile for evaluation of competency is necessary or (ii) the juvenile is currently hospitalized in a psychiatric hospital. If one of these findings is made, the court, under authority of this subsection, may order the juvenile sent to a hospital designated by the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services as appropriate for the evaluation of juveniles against whom a delinquency petition has been filed.

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 petition, (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the juvenile, and the judge ordering the evaluation, and (iii) information about the alleged offense. The moving party shall provide the evaluator a summary of the reasons for the evaluation request. All information required by this subsection shall be provided to the evaluator within ninety-six hours of the issuance of the court order requiring the evaluation and when applicable, shall be submitted prior to admission to the facility providing the inpatient evaluation. If the ninety-six-hour period expires on a Saturday, Sunday or other legal holiday, the ninety-six hours shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

D. If the juvenile is hospitalized under the provisions of subsection B, the juvenile shall be hospitalized for such time as the director of the hospital deems necessary to perform an adequate evaluation of the juvenile's competency, but not to exceed ten days from the date of admission to the hospital. All evaluations shall be completed and the report filed with the court within fourteen days of receipt by the evaluator of all information required under subsection C.

E. Upon completion of the evaluation, the evaluator shall promptly and in no event exceeding fourteen days after recipt of all required information submit the report in writing to the court and the attorneys of record concerning (i) the juvenile's capacity to understand the proceedings against him; (ii) his ability to assist his attorney; and (iii) his need for services in the event he is found incompetent, including a description of the suggested necessary services and least restrictive setting to assist the juvenile in restoration to competency. No statements of the juvenile relating to the alleged offense shall be included in the report.

F. After receiving the report described in subsection E, the court shall promptly determine whether

the juvenile is competent to stand trial for adjudication or disposition. A hearing on the juvenile's competency is not required unless one is requested by the attorney for the Commonwealth or the attorney for the juvenile or when required under § 16.1-357 B. If a hearing is held, the party alleging that the juvenile is incompetent shall bear the burden of proving by a preponderance of the evidence the juvenile's incompetency. The juvenile shall have the right to notice of the hearing and the right to personally participate in and introduce evidence at the hearing.

If the juvenile is otherwise able to understand the charges against him and assist in his defense, a finding of incompetency shall not be made based solely on any or all of the following: (i) the juvenile's age or developmental factors, (ii) the juvenile's claim to be unable to remember the time period surrounding the alleged offense, or (iii) the fact that the juvenile is under the influence of medication.

§ 16.1-357. Disposition when juvenile found incompetent.

A. Upon finding pursuant to subsection F of § 16.1-356 that the juvenile is incompetent, the court shall order that the juvenile receive services to restore his competency in either a secure or a nonsecure community setting. A copy of the order shall be forwarded to the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services, who shall arrange for the provision of services. Any report submitted pursuant to subsection E of § 16.1-356 shall be made available to the agent providing restoration.

B. If the court finds the juvenile incompetent but restorable to competency in the foreseeable future, it shall order services for up to three months. At the end of three months from the date restoration is ordered under subsection A of this section, if the juvenile remains incompetent in the opinion of the agent providing restoration, the agent shall so notify the court and make recommendations concerning disposition of the juvenile. The court shall hold a hearing according to the procedures specified in subsection F of § 16.1-356 and, if it finds the juvenile unrestorably incompetent, shall order one of the dispositions pursuant to § 16.1-358. If the court finds the juvenile incompetent but restorable to competency, it may order continued services for additional three-month periods, provided a hearing pursuant to subsection F of § 16.1-356 is held at the completion of each such period and the juvenile continues to be incompetent but restorable to competency in the foreseeable future.

C. If, at any time after the juvenile is ordered to undergo services under subsection A of this section, the agent providing restoration believes the juvenile's competency is restored, the agent shall immediately send a report to the court as prescribed in subsection E of § 16.1-356. The court shall make a ruling on the juvenile's competency according to the procedures specified in subsection F of § 16.1-356.

§ 16.1-358. Disposition of the unrestorable incompetent juvenile.

If, at any time after the juvenile is ordered to undergo services pursuant to subsection A of § 16.1-357, the agent providing restoration concludes that the juvenile is likely to remain incompetent for the foreseeable future, he shall send a report to the court so stating. The report shall also indicate whether, in the agent's opinion, the juvenile should be committed pursuant to Article 16 (§ 16.1-335 et seq.) of this chapter, certified pursuant to § 37.1-65.1, provided other services by the court, or released. Upon receipt of the report, the court shall make a competency determination according to the procedures specified in subsection F of § 16.1-356. If the court finds that the juvenile is incompetent and is likely to remain so for the foreseeable future, it shall order that the juvenile (i) be committed pursuant to Article 16 (§ 16.1-335 et seq.) of this chapter, (ii) be certified pursuant to § 37.1-65.1, (iii) have a child in need of services petition filed on his behalf pursuant to § 16.1-260 D, or (iv) be released. If the court finds the juvenile incompetent but restorable to competency in the foreseeable future, it may order services continued until three months have elapsed from the date of the provision of restoration ordered under subsection A of § 16.1-357.

If not dismissed without prejudice at an earlier time, charges against an unrestorably incompetent juvenile shall be dismissed in compliance with the time frames as follows: in the case of a charge which would be a misdemeanor, one year from the date of the juvenile's arrest for such charge; and in the case of a charge which would be a felony, three years from the date of the juvenile's arrest for such charges.

§ 16.1-359. Litigating certain issues when the juvenile is incompetent.

A finding of incompetency does not preclude the adjudication, at any time before trial, of a motion objecting to the sufficiency of the petition, nor does it preclude the adjudication of similar legal objections which, in the court's opinion, may be undertaken without the personal participation of the juvenile.

§ 16.1-360. Disclosure by juvenile during evaluation or restoration; use at guilt phase of trial adjudication or disposition hearing.

No statement or disclosure by the juvenile concerning the alleged offense made during a competency evaluation ordered pursuant to § 16.1-356, or services ordered pursuant to § 16.1-357 may be used against the juvenile at the adjudication or disposition hearings as evidence or as a basis for such

evidence.

§ 16.1-361. Compensation of experts.

Each psychiatrist, clinical psychologist, licensed clinical social worker, or other expert appointed by the court to render professional service pursuant to § 16.1-356, shall receive a reasonable fee for such service. With the exception of services provided by state mental health or mental retardation facilities, the fee shall be determined in each instance by the court that appointed the expert, in accordance with guidelines established by the Supreme Court after consultation with the Department of Mental Health, Mental Retardation and Substance Abuse Services. If any such expert is required to appear as a witness in any hearing held pursuant to § 16.1-356, he shall receive mileage and a fee of $100 for each day during which he is required to serve. An itemized account of expenses, duly sworn to, must be presented to the court, and when allowed shall be certified to the Supreme Court for payment out of the state treasury, and be charged against the appropriations made to pay criminal charges. Allowance for the fee and for the per diem authorized shall also be made by order of the court, duly certified to the Supreme Court for payment out of the appropriation to pay criminal charges.