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SENATE BILL NO. 1141

Offered January 8, 2003

Prefiled January 8, 2003

A BILL to amend and reenact §§ 18.2-10, 19.2-175, 19.2-264.3:1, 19.2-264.4 and 37.1-1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 8.01-654.2, 19.2-264.3:1.1, 19.2-264.3:1.2 and 19.2-264.3:3, relating to capital cases; mental retardation.

Patrons—Stolle, Blevins, Howell and Norment; Delegates: Albo, Almand, Kilgore, Melvin and Moran

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-10, 19.2-175, 19.2-264.3:1, 19.2-264.4 and 37.1-1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 8.01-654.2, 19.2-264.3:1.1, 19.2-264.3:1.2 and 19.2-264.3:3 as follows:

§ 8.01-654.2. Presentation of claim of mental retardation by person sentenced to death before the effective date of this section.

Notwithstanding any other provision of law, any person under sentence of death whose sentence became final in the circuit court before the effective date of this section, and who desires to have a claim of his mental retardation presented to the Supreme Court, shall do so by one of the following methods: (i) if the person has not commenced a direct appeal, he shall present his claim of mental retardation by assignment of error and in his brief in that appeal, or if his direct appeal is pending in the Supreme Court, he shall file a supplemental assignment of error and brief containing his claim of mental retardation, or (ii) if the person has not filed a petition for a writ of habeas corpus under subsection C of § 8.01-654, he shall present his claim of mental retardation in a petition for a writ of habeas corpus under such subsection, or if such a petition is pending in the Supreme Court, he shall file an amended petition containing his claim of mental retardation. A person proceeding under this section shall allege the factual basis for his claim of mental retardation. The Supreme Court shall consider a claim raised under this section and if it determines that the claim is not frivolous, it shall remand the claim to the circuit court for a determination of mental retardation; otherwise the Supreme Court shall dismiss the petition. The provisions of §§ 19.2-264.3:1.1 and 19.2-264.3:1.2 shall govern a determination of mental retardation made pursuant to this section. If the claim is before the Supreme Court on direct appeal and is remanded to the circuit court and the case wherein the sentence of death was imposed was tried by a jury, the circuit court shall empanel a new jury for the sole purpose of making a determination of mental retardation.

If the person has completed both a direct appeal and a habeas corpus proceeding under subsection C of § 8.01-654, he shall not be entitled to file any further habeas petitions in the Supreme Court and his sole remedy shall lie in federal court.

§ 18.2-10. Punishment for conviction of felony.

The authorized punishments for conviction of a felony are:

(a) For Class 1 felonies, death, if the person so convicted was ~~sixteen~~ 16 years of age or older at the time of the offense and is not determined to be mentally retarded pursuant to § 19.2-264.3:1.1, or imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000. If the person was under ~~sixteen~~ 16 years of age at the time of the offense or is determined to be mentally retarded pursuant to § 19.2-264.3:1.1, the punishment shall be imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000.

(b) For Class 2 felonies, imprisonment for life or for any term not less than ~~twenty~~ 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(c) For Class 3 felonies, a term of imprisonment of not less than ~~five~~ 5 years nor more than ~~twenty~~ 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(d) For Class 4 felonies, a term of imprisonment of not less than ~~two~~ 2 years nor more than ~~ten~~ 10 years and, subject to subdivision (g), a fine of not more than \$100,000.

(e) For Class 5 felonies, a term of imprisonment of not less than ~~one~~ 1 year nor more than ~~ten~~ 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than ~~twelve~~ 12 months and a fine of not more than \$2,500, either or both.

(f) For Class 6 felonies, a term of imprisonment of not less than ~~one~~ 1 year nor more than ~~five~~ 5 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than ~~twelve~~ 12 months and a fine of not more than \$2,500, either or both.

(g) Except as specifically authorized in subdivision (e) or (f), or in Class 1 felonies for which a

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59 sentence of death is imposed, the court shall impose either a sentence of imprisonment together with a
60 fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose
61 only a fine.

62 For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after
63 July 1, 2000, shall, except in cases in which the court orders a suspended term of confinement of at
64 least ~~six~~ 6 months, impose an additional term of not less than ~~six~~ 6 months nor more than ~~three~~ 3
65 years, which shall be suspended conditioned upon successful completion of a period of post-release
66 supervision pursuant to § 19.2-295.2 and compliance with such other terms as the sentencing court may
67 require. However, such additional term may only be imposed when the sentence includes an active term
68 of incarceration in a correctional facility.

69 For a felony offense prohibiting proximity to children as described in subsection A of § 18.2-370.2,
70 the sentencing court is authorized to impose the punishment set forth in subsection B of that section in
71 addition to any other penalty provided by law.

72 § 19.2-175. Compensation of experts.

73 Each psychiatrist, clinical psychologist or other expert appointed by the court to render professional
74 service pursuant to §§ 19.2-168.1, 19.2-169.1, 19.2-169.5, subsection A of § 19.2-176, §§ 19.2-182.8,
75 19.2-182.9, 19.2-264.3:1, 19.2-264.3:3 or § 19.2-301, who is not regularly employed by the
76 Commonwealth of Virginia except by the University of Virginia School of Medicine and the Medical
77 College of Virginia, shall receive a reasonable fee for such service. The fee shall be determined in each
78 instance by the court that appointed the expert, in accordance with guidelines established by the
79 Supreme Court after consultation with the Department of Mental Health, Mental Retardation and
80 Substance Abuse Services. Except in capital murder cases the fee shall not exceed \$400, but in addition
81 if any such expert is required to appear as a witness in any hearing held pursuant to such sections, he
82 shall receive mileage and a fee of \$100 for each day during which he is required so to serve. An
83 itemized account of expense, duly sworn to, must be presented to the court, and when allowed shall be
84 certified to the Supreme Court for payment out of the state treasury, and be charged against the
85 appropriations made to pay criminal charges. Allowance for the fee and for the per diem authorized
86 shall also be made by order of the court, duly certified to the Supreme Court for payment out of the
87 appropriation to pay criminal charges.

88 § 19.2-264.3:1. Expert assistance when defendant's mental condition relevant to capital sentencing.

89 A. Upon (i) motion of the attorney for a defendant charged with or convicted of capital murder and
90 (ii) a finding by the court that the defendant is financially unable to pay for expert assistance, the court
91 shall appoint ~~one~~ 1 or more qualified mental health experts to evaluate the defendant and to assist the
92 defense in the preparation and presentation of information concerning the defendant's history, character,
93 or mental condition, including (i) whether the defendant acted under extreme mental or emotional
94 disturbance at the time of the offense; (ii) whether the capacity of the defendant to appreciate the
95 criminality of his conduct or to conform his conduct to the requirements of the law was significantly
96 impaired at the time of the offense; and (iii) whether there are any other factors in mitigation relating
97 to the history or character of the defendant or the defendant's mental condition at the time of the offense.
98 The mental health expert appointed pursuant to this section shall be (i) a psychiatrist, a clinical
99 psychologist, or an individual with a doctorate degree in clinical psychology who has successfully
100 completed forensic evaluation training as approved by the Commissioner of Mental Health, Mental
101 Retardation and Substance Abuse Services and (ii) qualified by specialized training and experience to
102 perform forensic evaluations. The defendant shall not be entitled to a mental health expert of the
103 defendant's own choosing or to funds to employ such expert.

104 B. Evaluations performed pursuant to subsection A may be combined with evaluations performed
105 pursuant to § 19.2-169.5 and shall be governed by subsections B and C of § 19.2-169.5.

106 C. The expert appointed pursuant to subsection A shall submit to the attorney for the defendant a
107 report concerning the history and character of the defendant and the defendant's mental condition at the
108 time of the offense. The report shall include the expert's opinion as to (i) whether the defendant acted
109 under extreme mental or emotional disturbance at the time of the offense, (ii) whether the capacity of
110 the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements
111 of the law was significantly impaired, and (iii) whether there are any other factors in mitigation relating
112 to the history or character of the defendant or the defendant's mental condition at the time of the
113 offense.

114 D. The report described in subsection C shall be sent solely to the attorney for the defendant and
115 shall be protected by the attorney-client privilege. However, the Commonwealth shall be given the report
116 and the results of any other evaluation of the defendant's mental condition conducted relative to the
117 sentencing proceeding and copies of psychiatric, psychological, medical or other records obtained during
118 the course of such evaluation, after the attorney for the defendant gives notice of an intent to present
119 psychiatric or psychological evidence in mitigation pursuant to subsection E.

120 E. In any case in which a defendant charged with capital murder intends, in the event of conviction,

to present testimony of an expert witness to support a claim in mitigation relating to the defendant's history, character or mental condition, he or his attorney shall give notice in writing to the attorney for the Commonwealth, at least ~~twenty-one~~ 21 days before trial, of his intention to present such testimony. In the event that such notice is not given and the defendant tenders testimony by an expert witness at the sentencing phase of the trial, then the court may, in its discretion, upon objection of the Commonwealth, either allow the Commonwealth a continuance or, under appropriate circumstances, bar the defendant from presenting such evidence.

F. 1. If the attorney for the defendant gives notice pursuant to subsection E and the Commonwealth thereafter seeks an evaluation concerning the existence or absence of mitigating circumstances relating to the defendant's mental condition at the time of the offense, the court shall appoint ~~one~~ 1 or more qualified experts to perform such an evaluation. The court shall order the defendant to submit to such an evaluation, and advise the defendant on the record in court that a refusal to cooperate with the Commonwealth's expert could result in exclusion of the defendant's expert evidence. The qualification of the experts shall be governed by subsection A. The location of the evaluation shall be governed by subsection B of § 19.2-169.5. The attorney for the Commonwealth shall be responsible for providing the experts the information specified in subsection C of § 19.2-169.5. After performing their evaluation, the experts shall report their findings and opinions and provide copies of psychiatric, psychological, medical or other records obtained during the course of the evaluation to the attorneys for the Commonwealth and the defense.

2. If the court finds, after hearing evidence presented by the parties, out of the presence of the jury, that the defendant has refused to cooperate with an evaluation requested by the Commonwealth, the court may admit evidence of such refusal or, in the discretion of the court, bar the defendant from presenting his expert evidence.

G. ~~No statement or disclosure by the defendant made during a competency evaluation performed pursuant to § 19.2-169.1, an evaluation performed pursuant to § 19.2-169.5 to determine sanity at the time of the offense, treatment provided pursuant to § 19.2-169.2 or § 19.2-169.6 or a capital sentencing evaluation performed pursuant to this section, and no evidence derived from any such statements or disclosures may be introduced against the defendant at the sentencing phase of a capital murder trial for the purpose of proving the aggravating circumstances specified in § 19.2-264.4. Such statements or disclosures shall be admissible in rebuttal only when relevant to issues in mitigation raised by the defense.~~

§ 19.2-264.3:1.1. Capital cases; determination of mental retardation.

A. As used in this section and § 19.2-264.3:1.2, the following definition applies:

"Mentally retarded" means a disability, originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning carried out in conformity with accepted professional practice, that is at least 2 standard deviations below the mean, considering the standard error of measurement for the specific instruments used and (ii) significant limitations in adaptive behavior as expressed in conceptual, social and practical adaptive skills.

B. Assessments of mental retardation under this section and § 19.2-264.3:1.2 shall conform to the following requirements:

1. Assessment of intellectual functioning shall include administration of at least one standardized measure generally accepted by the field and appropriate for administration to the particular defendant being assessed, taking into account cultural, linguistic, sensory, motor, behavioral and other individual factors. Testing of intellectual functioning shall be carried out in conformity with accepted professional practice, and whenever indicated, the assessment shall include information from multiple sources. The Commissioner of Mental Health, Mental Retardation and Substance Abuse Services shall maintain a nonexclusive list of standardized measures of intellectual functioning generally accepted by the field.

2. Assessment of adaptive behavior shall be based on multiple sources of information, including clinical interview, psychological testing and educational, correctional and vocational records. The assessment shall include at least one standardized measure generally accepted by the field and appropriate for administration to the particular defendant being assessed, for assessing adaptive behavior, taking into account the environments in which the person has lived as well as cultural, linguistic, sensory, motor, behavioral and other individual factors, unless not feasible. In reaching a clinical judgment regarding whether the defendant exhibits significant limitations in adaptive behavior, the examiner shall give performance on standardized measures whatever weight is clinically appropriate in light of the defendant's history and characteristics and the context of the assessment.

3. Assessment of developmental origin shall be based on multiple sources of information generally accepted by the field and appropriate for the particular defendant being assessed, including, whenever available, educational, social service, medical records, prior disability assessments, parental or caregiver reports, and other collateral data, recognizing that valid clinical assessment conducted during

182 *the defendant's childhood may not have conformed to current practice standards.*

183 *C. In any case in which the offense may be punishable by death and is tried before a jury, the issue*
184 *of mental retardation, if raised by the defendant in accordance with the notice provisions of subsection*
185 *E of § 19.2-264.3:1.2, shall be determined by the jury as part of the sentencing proceeding required by*
186 *§ 19.2-264.4.*

187 *In any case in which the offense may be punishable by death and is tried before a judge, the issue of*
188 *mental retardation, if raised by the defendant in accordance with the notice provisions of subsection E*
189 *of § 19.2-264.3:1.2, shall be determined by the judge as part of the sentencing proceeding required by*
190 *§ 19.2-264.4.*

191 *The defendant shall bear the burden of proving that he is mentally retarded by a preponderance of*
192 *the evidence.*

193 *D. The verdict of the jury, if the issue of mental retardation is raised, shall be in writing, and, in*
194 *addition to the forms specified in § 19.2-264.4, shall include one of the following forms:*

195 *" We the jury, on the issue joined, having found the defendant guilty of (here set out the statutory*
196 *language of the offense charged), and that the defendant has proven by a preponderance of the evidence*
197 *that he is mentally retarded, fix his punishment at (i) imprisonment for life or (ii) imprisonment for life*
198 *and a fine of \$_____.*

199 *Signed. foreman"*

200 *or*

201 *(2) " We the jury, on the issue joined, having found the defendant guilty of (here set out the statutory*
202 *language of the offense charged) and find that the defendant has not proven by a preponderance of the*
203 *evidence that he is mentally retarded.*

204 *Signed. foreman"*

205 *§ 19.2-264.3:1.2. Expert assistance when issue of defendant's mental retardation relevant to capital*
206 *sentencing.*

207 *A. Upon (i) motion of the attorney for a defendant charged with or convicted of capital murder and*
208 *(ii) a finding by the court that the defendant is financially unable to pay for expert assistance, the court*
209 *shall appoint 1 or more qualified mental health experts to assess whether or not the defendant is*
210 *mentally retarded and to assist the defense in the preparation and presentation of information*
211 *concerning the defendant's mental retardation. The mental health expert appointed pursuant to this*
212 *section shall be (a) a psychiatrist, a clinical psychologist or an individual with a doctorate degree in*
213 *clinical psychology, (b) skilled in the administration, scoring and interpretation of intelligence tests and*
214 *measures of adaptive behavior and (c) qualified by experience and by specialized training, approved by*
215 *the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services, to perform*
216 *forensic evaluations. The defendant shall not be entitled to a mental health expert of the defendant's*
217 *own choosing or to funds to employ such expert.*

218 *B. Evaluations performed pursuant to subsection A may be combined with evaluations performed*
219 *pursuant to §§ 19.2-169.1, 19.2-169.5, or § 19.2-264.3:1.*

220 *C. The expert appointed pursuant to subsection A shall submit to the attorney for the defendant a*
221 *report assessing whether the defendant is mentally retarded. The report shall include the expert's*
222 *opinion as to whether the defendant is mentally retarded.*

223 *D. The report described in subsection C shall be sent solely to the attorney for the defendant and*
224 *shall be protected by the attorney-client privilege. However, the Commonwealth shall be given a copy of*
225 *the report, the results of any other evaluation of the defendant's mental retardation and copies of*
226 *psychiatric, psychological, medical or other records obtained during the course of the evaluation, after*
227 *the attorney for the defendant gives notice of an intent to present evidence of mental retardation*
228 *pursuant to subsection E.*

229 *E. In any case in which a defendant charged with capital murder intends, in the event of conviction,*
230 *to present testimony of an expert witness to support a claim that he is mentally retarded, he or his*
231 *attorney shall give notice in writing to the attorney for the Commonwealth, at least 21 days before trial,*
232 *of his intention to present such testimony. In the event that such notice is not given and the defendant*
233 *tenders testimony by an expert witness at the sentencing phase of the trial, then the court may, in its*
234 *discretion, upon objection of the Commonwealth, either allow the Commonwealth a continuance or,*
235 *under appropriate circumstances, bar the defendant from presenting such evidence.*

236 *F. 1. If the attorney for the defendant gives notice pursuant to subsection E and the Commonwealth*
237 *thereafter seeks an evaluation concerning the existence or absence of the defendant's mental retardation,*
238 *the court shall appoint 1 or more qualified experts to perform such an evaluation. The court shall order*
239 *the defendant to submit to such an evaluation, and advise the defendant on the record in court that a*
240 *refusal to cooperate with the Commonwealth's experts could result in exclusion of the defendant's expert*
241 *evidence. The qualification of the experts shall be governed by subsection A. The location of the*
242 *evaluation shall be governed by subsection B. The attorney for the Commonwealth shall be responsible*
243 *for providing the experts the information specified in subsection C of § 19.2-169.5. After performing*

their evaluation, the experts shall report their findings and opinions and provide copies of psychiatric, psychological, medical or other records obtained during the course of the evaluation to the attorneys for the Commonwealth and the defense.

2. If the court finds, after hearing evidence presented by the parties, out of the presence of the jury, that the defendant has refused to cooperate with an evaluation requested by the Commonwealth, the court may admit evidence of such refusal or, in the discretion of the court, bar the defendant from presenting his expert evidence.

§ 19.2-264.3:3. Limitations on use of statements or disclosure by defendant during evaluations.

No statement or disclosure by the defendant made during a competency evaluation performed pursuant to § 19.2-169.1, an evaluation performed pursuant to § 19.2-169.5 to determine sanity at the time of the offense, treatment provided pursuant to § 19.2-169.2 or § 19.2-169.6, a mental condition evaluation performed pursuant to § 19.2-264.3:1 or a mental retardation evaluation performed pursuant to § 19.2-264.3:1.2, and no evidence derived from any such statements or disclosures may be introduced against the defendant at the sentencing phase of a capital murder trial for the purpose of proving the aggravating circumstances specified in § 19.2-264.4. Such statements or disclosures shall be admissible in rebuttal only when relevant to issues in mitigation raised by the defense.

§ 19.2-264.4. Sentence proceeding.

A. Upon a finding that the defendant is guilty of an offense which may be punishable by death, a proceeding shall be held which shall be limited to a determination as to whether the defendant shall be sentenced to death or life imprisonment. Upon request of the defendant, a jury shall be instructed that for all Class 1 felony offenses committed after January 1, 1995, a defendant shall not be eligible for parole if sentenced to imprisonment for life. In case of trial by jury, where a sentence of death is not recommended, the defendant shall be sentenced to imprisonment for life.

A1. In any proceeding conducted pursuant to this section, the court shall permit the victim, as defined in § 19.2-11.01, upon the motion of the attorney for the Commonwealth, and with the consent of the victim, to testify in the presence of the accused regarding the impact of the offense upon the victim. The court shall limit the victim's testimony to the factors set forth in clauses (i) through (vi) of subsection A of § 19.2-299.1.

B. In cases of trial by jury, evidence may be presented as to any matter which the court deems relevant to sentence, except that reports under the provisions of § 19.2-299, or under any rule of court, shall not be admitted into evidence.

Evidence which may be admissible, subject to the rules of evidence governing admissibility, may include the circumstances surrounding the offense, the history and background of the defendant, and any other facts in mitigation of the offense. Facts in mitigation may include, but shall not be limited to, the following: (i) the defendant has no significant history of prior criminal activity, (ii) the capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance, (iii) the victim was a participant in the defendant's conduct or consented to the act, (iv) at the time of the commission of the capital felony, the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was significantly impaired, (v) the age of the defendant at the time of the commission of the capital offense, or (vi) ~~mental retardation~~ even if § 19.2-264.3:1.1 is inapplicable as a bar to the death penalty, the subaverage intellectual functioning of the defendant.

C. The penalty of death shall not be imposed unless the Commonwealth shall prove beyond a reasonable doubt that there is a probability based upon evidence of the prior history of the defendant or of the circumstances surrounding the commission of the offense of which he is accused that he would commit criminal acts of violence that would constitute a continuing serious threat to society, or that his conduct in committing the offense was outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind or aggravated battery to the victim.

D. The verdict of the jury shall be in writing, and in one of the following forms:

(1) "We, the jury, on the issue joined, having found the defendant guilty of (here set out statutory language of the offense charged) and that (after consideration of his prior history that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society) or his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved (torture) (depravity of mind) (aggravated battery to the victim), and having considered the evidence in mitigation of the offense, unanimously fix his punishment at death.

Signed, foreman"

or

(2) "We, the jury, on the issue joined, having found the defendant guilty of (here set out statutory language of the offense charged) and having considered all of the evidence in aggravation and mitigation of such offense, fix his punishment at (i) imprisonment for life; or (ii) imprisonment for life and a fine of \$.

305 Signed , foreman"

306 E. In the event the jury cannot agree as to the penalty, the court shall dismiss the jury, and impose a
307 sentence of imprisonment for life.

308 § 37.1-1. Definitions.

309 As used in this title except where the context requires a different meaning or where it is otherwise
310 provided, the following words shall have the meaning ascribed to them:

311 "Abuse" means any act or failure to act by an employee or other person responsible for the care of
312 an individual in a facility or program operated, licensed, or funded by the Department, excluding those
313 operated by the Department of Corrections, that was performed or was failed to be performed
314 knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological
315 harm, injury, or death to a person receiving care or treatment for mental illness, mental retardation or
316 substance abuse. Examples of abuse include, but are not limited to, acts such as:

317 1. Rape, sexual assault, or other criminal sexual behavior;

318 2. Assault or battery;

319 3. Use of language that demeans, threatens, intimidates or humiliates the person;

320 4. Misuse or misappropriation of the person's assets, goods, or property;

321 5. Use of excessive force when placing a person in physical or mechanical restraint;

322 6. Use of physical or mechanical restraints on a person that is not in compliance with federal and
323 state laws, regulations, and policies, professionally accepted standards of practice or the person's
324 individualized services plan; and

325 7. Use of more restrictive or intensive services or denial of services to punish the person or that is
326 not consistent with his individualized services plan;

327 "Alcoholic" means a person who: (i) through use of alcohol has become dangerous to the public or
328 himself; or (ii) because of such alcohol use is medically determined to be in need of medical or
329 psychiatric care, treatment, rehabilitation or counseling;

330 "Board" means the State Mental Health, Mental Retardation and Substance Abuse Services Board;

331 "Client," as used in Chapter 10 (§ 37.1-194 et seq.) of this title, means any person receiving a service
332 provided by personnel or facilities under the jurisdiction or supervision of a community services board;

333 "Commissioner" means the Commissioner of Mental Health, Mental Retardation and Substance
334 Abuse Services;

335 "Community services board" means a citizens' board established pursuant to § 37.1-195 which
336 provides mental health, mental retardation and substance abuse programs and services within the
337 political subdivision or political subdivisions participating on the board;

338 "Consumer" means a current or former direct recipient of public or private mental health, mental
339 retardation, or substance abuse treatment or habilitation services;

340 "Department" means the Department of Mental Health, Mental Retardation and Substance Abuse
341 Services;

342 "Director" means the chief executive officer of a hospital or of a training center for the mentally
343 retarded;

344 "Drug addict" means a person who: (i) through use of habit-forming drugs or other drugs enumerated
345 in the Virginia Drug Control Act (§ 54.1-3400 et seq.) as controlled drugs, has become dangerous to the
346 public or himself; or (ii) because of such drug use, is medically determined to be in need of medical or
347 psychiatric care, treatment, rehabilitation or counseling;

348 "Facility" means a state or private hospital, training center for the mentally retarded, psychiatric
349 hospital, or other type of residential and ambulatory mental health or mental retardation facility and
350 when modified by the word "state" it means a facility under the supervision and management of the
351 Commissioner;

352 "Family member" means an immediate family member of a consumer or the principal caregiver of a
353 consumer. A principal caregiver is a person who acts in the place of an immediate family member,
354 including other relatives and foster care providers, but does not have a proprietary interest in the care of
355 the consumer;

356 "Hospital" or "hospitals" when not modified by the words "state" or "private" shall be deemed to
357 include both state hospitals and private hospitals devoted to or with facilities for the care and treatment
358 of the mentally ill or mentally retarded;

359 "Judge" includes only the judges, associate judges and substitute judges of general district courts
360 within the meaning of Chapter 4.1 (§ 16.1-69.1 et seq.) of Title 16.1 and of juvenile and domestic
361 relations district courts within the meaning of Chapter 11 (§ 16.1-226 et seq.) of Title 16.1, as well as
362 the special justices authorized by § 37.1-88;

363 "Legal resident" means any person who is a bona fide resident of the Commonwealth of Virginia;

364 "Mental retardation" means ~~substantial~~ *a disability, originating before the age of 18 years,*
365 *characterized concurrently by (i) significantly subaverage general intellectual functioning which*
366 *originates during the development period and is associated with impairment 2 and (ii) significant*

limitations in adaptive behavior as expressed in conceptual, social and practical adaptive skills;

"Mentally ill" means any person afflicted with mental disease to such an extent that for his own welfare or the welfare of others, he requires care and treatment; provided, that for the purposes of Chapter 2 (§ 37.1-63 et seq.) of this title, the term "mentally ill" shall be deemed to include any person who is a drug addict or alcoholic;

"Neglect" means failure by an individual, program or facility responsible for providing services to provide nourishment, treatment, care, goods, or services necessary to the health, safety or welfare of a person receiving care or treatment for mental illness, mental retardation or substance abuse;

"Patient" or "resident" means a person voluntarily or involuntarily admitted to or residing in a facility according to the provisions of this title;

"Private hospital" means a hospital or institution which is duly licensed pursuant to the provisions of this title;

"Private institution" means an establishment which is not operated by the Department and which is licensed under Chapter 8 (§ 37.1-179 et seq.) of this title for the care or treatment of mentally ill or mentally retarded persons, including psychiatric wards of general hospitals;

"Property" as used in §§ 37.1-12 and 37.1-13 includes land and structures thereon;

"State hospital" means a hospital, training school or other such institution operated by the Department for the care and treatment of the mentally ill or mentally retarded;

"System of facilities" or "facility system" means the entire system of hospitals and training centers for the mentally retarded and other types of facilities for the residential and ambulatory treatment, training and rehabilitation of the mentally ill and mentally retarded as defined in this section under the general supervision and management of the Commissioner;

"Training center for the mentally retarded" means a regional facility for the treatment, training and habilitation of the mentally retarded in a specific geographical area.

2. That an emergency exists and this act is in force from its passage.

3. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.