

20108211D

HOUSE BILL NO. 259

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 12, 2020)

(Patron Prior to Substitute—Delegate Simon)

A BILL to amend and reenact §§ 18.2-308.1:3 and 19.2-169.1 of the Code of Virginia, relating to unrestorably incompetent defendant; competency report.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.1:3 and 19.2-169.1 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-308.1:3. Purchase, possession, or transportation of firearm by persons involuntarily admitted or ordered to outpatient treatment; penalty.

A. It shall be unlawful for any person (i) involuntarily admitted to a facility or ordered to mandatory outpatient treatment pursuant to § 19.2-169.2; (ii) involuntarily admitted to a facility or ordered to mandatory outpatient treatment as the result of a commitment hearing pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2; (iii) involuntarily admitted to a facility or ordered to mandatory outpatient treatment as a minor 14 years of age or older as the result of a commitment hearing pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1; (iv) who was the subject of a temporary detention order pursuant to § 37.2-809 and subsequently agreed to voluntary admission pursuant to § 37.2-805 ~~or~~; (v) who, as a minor 14 years of age or older, was the subject of a temporary detention order pursuant to § 16.1-340.1 and subsequently agreed to voluntary admission pursuant to § 16.1-338; or (vi) who was found incompetent to stand trial and likely to remain so for the foreseeable future and whose case was disposed of in accordance with § 19.2-169.3, to purchase, possess, or transport a firearm. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

B. Any person prohibited from purchasing, possessing or transporting firearms under this section may, at any time following his release from involuntary admission to a facility, his release from an order of mandatory outpatient treatment, ~~or~~ his release from voluntary admission pursuant to § 37.2-805 following the issuance of a temporary detention order, *his release from a training center, or his release as provided by § 19.2-169.3*, petition the general district court in the city or county in which he resides or, if the person is not a resident of the Commonwealth, the general district court of the city or county in which the most recent of the proceedings described in subsection A occurred to restore his right to purchase, possess, or transport a firearm. A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. If the court determines, after receiving and considering evidence concerning the circumstances regarding the disabilities referred to in subsection A and the person's criminal history, treatment record, and reputation as developed through character witness statements, testimony, or other character evidence, that the person will not likely act in a manner dangerous to public safety and that granting the relief would not be contrary to the public interest, the court shall grant the petition. Any person denied relief by the general district court may petition the circuit court for a de novo review of the denial. Upon a grant of relief in any court, the court shall enter a written order granting the petition, in which event the provisions of subsection A do not apply. The clerk of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.

C. As used in this section, "treatment record" shall include copies of health records detailing the petitioner's psychiatric history, which shall include the records pertaining to the commitment or adjudication that is the subject of the request for relief pursuant to this section.

§ 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

60 Commissioner.

61 B. Location of evaluation. — The evaluation shall be performed on an outpatient basis at a mental
62 health facility or in jail unless an outpatient evaluation has been conducted and the outpatient evaluator
63 opines that a hospital-based evaluation is needed to reliably reach an opinion or unless the defendant is
64 in the custody of the Commissioner of Behavioral Health and Developmental Services pursuant to
65 § 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
66 seq.) of Chapter 8 of Title 37.2.

67 C. Provision of information to evaluators. — The court shall require the attorney for the
68 Commonwealth to provide to the evaluators appointed under subsection A any information relevant to
69 the evaluation, including, but not limited to (i) a copy of the warrant or indictment; (ii) the names and
70 addresses of the attorney for the Commonwealth, the attorney for the defendant, and the judge ordering
71 the evaluation; (iii) information about the alleged crime; and (iv) a summary of the reasons for the
72 evaluation request. The court shall require the attorney for the defendant to provide any available
73 psychiatric records and other information that is deemed relevant. The court shall require that
74 information be provided to the evaluator within 96 hours of the issuance of the court order pursuant to
75 this section.

76 D. The competency report. — Upon completion of the evaluation, the evaluators shall promptly
77 submit a report in writing to the court and the attorneys of record concerning (i) the defendant's capacity
78 to understand the proceedings against him; (ii) his ability to assist his attorney; and (iii) his need for
79 treatment in the event he is found incompetent but restorable, or incompetent for the foreseeable future.
80 If a need for restoration treatment is identified pursuant to clause (iii), the report shall state whether
81 inpatient or outpatient treatment (*community-based or jail-based*) is recommended. *In cases where a*
82 *defendant's competency is primarily compromised due to an ongoing and irreversible medical condition,*
83 *including dementia, developmental or intellectual delay, or traumatic brain injury, and where prior*
84 *medical or educational records are available to support the diagnosis, the report may recommend that*
85 *the court find the defendant unrestorably incompetent to stand trial and the court may proceed with the*
86 *disposition of the case in accordance with § 19.2-169.3.* No statements of the defendant relating to the
87 time period of the alleged offense shall be included in the report. The evaluator shall also send a
88 redacted copy of the report removing references to the defendant's name, date of birth, case number, and
89 court of jurisdiction to the Commissioner of Behavioral Health and Developmental Services for the
90 purpose of peer review to establish and maintain the list of approved evaluators described in subsection
91 A.

92 E. The competency determination. — After receiving the report described in subsection D, the court
93 shall promptly determine whether the defendant is competent to stand trial. A hearing on the defendant's
94 competency is not required unless one is requested by the attorney for the Commonwealth or the
95 attorney for the defendant, or unless the court has reasonable cause to believe the defendant will be
96 hospitalized under § 19.2-169.2. If a hearing is held, the party alleging that the defendant is incompetent
97 shall bear the burden of proving by a preponderance of the evidence the defendant's incompetency. The
98 defendant shall have the right to notice of the hearing, the right to counsel at the hearing and the right
99 to personally participate in and introduce evidence at the hearing.

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