

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend and reenact § 16.1-356 of the Code of Virginia, relating to juveniles; competency
3 evaluation; receipt of court order.

4 [S 1248]
5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That § 16.1-356 of the Code of Virginia is amended and reenacted as follows:**

8 **§ 16.1-356. Raising question of competency to stand trial; evaluation and determination of**
9 **competency.**

10 A. If, at any time after the attorney for the juvenile has been retained or appointed pursuant to a
11 delinquency proceeding and before the end of trial, the court finds, sua sponte or upon hearing evidence
12 or representations of counsel for the juvenile or the attorney for the Commonwealth, that there is
13 probable cause to believe that the juvenile lacks substantial capacity to understand the proceedings
14 against him or to assist his attorney in his own defense, the court shall order that a competency
15 evaluation be performed by at least one psychiatrist, clinical psychologist, licensed professional
16 counselor, licensed clinical social worker, or licensed marriage and family therapist, who is qualified by
17 training and experience in the forensic evaluation of juveniles.

18 The Commissioner of Behavioral Health and Developmental Services shall approve the training and
19 qualifications for individuals authorized to conduct juvenile competency evaluations and provide
20 restoration services to juveniles pursuant to this article. The Commissioner shall also provide all juvenile
21 courts with a list of guidelines for the court to use in the determination of qualifying individuals as
22 experts in matters relating to juvenile competency and restoration.

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

31 C. The court shall require the attorney for the Commonwealth to provide to the evaluators appointed
32 under subsection A any information relevant to the evaluation, including, but not limited to (i) a copy of
33 the warrant or petition; (ii) the names and addresses of the attorney for the Commonwealth, the attorney
34 for the juvenile, and the judge ordering the evaluation; and (iii) information about the alleged offense.
35 The court shall require the attorney for the juvenile to provide to the evaluator only the psychiatric
36 records and other information that is deemed relevant to the evaluation of competency. The moving
37 party shall provide the evaluator a summary of the reasons for the evaluation request. All information
38 required by this subsection shall be provided to the evaluator within 96 hours of the issuance of the
39 court order requiring the evaluation and when applicable, shall be submitted prior to admission to the
40 facility providing the inpatient evaluation. If the 96-hour period expires on a Saturday, Sunday, or other
41 legal holiday, the 96 hours shall be extended to the next day which is not a Saturday, Sunday, or legal
42 holiday. *The appointed evaluator or the director of the community services board, behavioral health*
43 *authority, or hospital shall acknowledge receipt of the court order to the clerk of the court on a form*
44 *developed by the Office of the Executive Secretary of the Supreme Court of Virginia as soon as*
45 *practicable but no later than the close of business on the next business day following receipt of the*
46 *court order. If the appointed evaluator or the director of the community services board, behavioral*
47 *health authority, hospital, or private evaluator is unable to conduct the evaluation, he shall inform the*
48 *court on the acknowledgement form.*

49 D. If the juvenile is hospitalized under the provisions of subsection B, the juvenile shall be
50 hospitalized for such time as the director of the hospital deems necessary to perform an adequate
51 evaluation of the juvenile's competency, but not to exceed 10 days from the date of admission to the
52 hospital. All evaluations shall be completed and the report filed with the court within 14 days of receipt
53 by the evaluator of all information required under subsection C.

54 E. Upon completion of the evaluation, the evaluator shall promptly and in no event exceeding 14
55 days after receipt of all required information submit the report in writing to the court and the attorneys
56 of record concerning (i) the juvenile's capacity to understand the proceedings against him; (ii) his ability

57 to assist his attorney; and (iii) his need for services in the event he is found incompetent, including a
58 description of the suggested necessary services and least restrictive setting to assist the juvenile in
59 restoration to competency. No statements of the juvenile relating to the alleged offense shall be included
60 in the report.

61 F. After receiving the report described in subsection E, the court shall promptly determine whether
62 the juvenile is competent to stand trial for adjudication or disposition. A hearing on the juvenile's
63 competency is not required unless one is requested by the attorney for the Commonwealth or the
64 attorney for the juvenile or when required under § 16.1-357 B. If a hearing is held, the party alleging
65 that the juvenile is incompetent shall bear the burden of proving by a preponderance of the evidence the
66 juvenile's incompetency. The juvenile shall have the right to notice of the hearing and the right to
67 personally participate in and introduce evidence at the hearing.

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