

2025 SESSION

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SENATE BILL NO. 1405

Offered January 14, 2025

A BILL to amend and reenact §§ 16.1-356 and 19.2-169.1 of the Code of Virginia, relating to raising question of competency to stand trial or plead; evaluation and determination of competency; second evaluation.

Patron—Diggs

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-356 and 19.2-169.1 of the Code of Virginia are amended and reenacted as follows:

§ 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, licensed professional counselor, licensed clinical social worker, or licensed marriage and family therapist, who is qualified by training and experience in the forensic evaluation of juveniles.

The Commissioner of Behavioral Health and Developmental 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 Behavioral Health and Developmental 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 court shall require the attorney for the juvenile to provide to the evaluator only the psychiatric records and other information that is deemed relevant to the evaluation of competency. 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 96 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 96-hour period expires on a Saturday, Sunday, or other legal holiday, the 96 hours shall be extended to the next day which is not a Saturday, Sunday, or legal holiday. The appointed evaluator or the director of the community services board, behavioral health authority, or hospital shall acknowledge receipt of the court order to the clerk of the court on a form developed by the Office of the Executive Secretary of the Supreme Court of Virginia as soon as practicable but no later than the close of business on the next business day following receipt of the court order. If the appointed evaluator or the director of the community services board, behavioral health authority, hospital, or private evaluator is unable to conduct the evaluation, he shall inform the court on the acknowledgement form.

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 10 days from the date of admission to the hospital. All evaluations shall be completed and the report filed with the court within 14 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 14 days after receipt 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

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

62 F. After receiving the report described in subsection E, the court shall promptly determine whether the
63 juvenile is competent to stand trial for adjudication or disposition. A hearing on the juvenile's competency is
64 not required unless one is requested by the attorney for the Commonwealth or the attorney for the juvenile or
65 when required under *subsection B of § 16.1-357 B*. If a hearing is held, the party alleging that the juvenile is
66 incompetent shall bear the burden of proving by a preponderance of the evidence the juvenile's incompetency
67 , *but prior to such hearing, if such hearing is requested by the attorney for the defendant, the attorney for the*
68 *Commonwealth may seek his own competency evaluation and report pursuant to this section by another*
69 *individual possessing the qualifications described in subsection A to present at such hearing.* The juvenile
70 shall have the right to notice of the hearing and the right to personally participate in and introduce evidence at
71 the hearing.

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

76 **§ 19.2-169.1. Raising question of competency to stand trial or plead; evaluation and determination
77 of competency.**

78 A. Raising competency issue; appointment of evaluators. — If, at any time after the attorney for the
79 defendant has been retained or appointed and before the end of trial, the court finds, upon hearing evidence or
80 representations of counsel for the defendant or the attorney for the Commonwealth, that there is probable
81 cause to believe that the defendant, whether a juvenile transferred pursuant to § 16.1-269.1 or adult, lacks
82 substantial capacity to understand the proceedings against him or to assist his attorney in his own defense, the
83 court shall order that a competency evaluation be performed by at least one psychiatrist or clinical
84 psychologist who (i) has performed forensic evaluations; (ii) has successfully completed forensic evaluation
85 training recognized by the Commissioner of Behavioral Health and Developmental Services; (iii) has
86 demonstrated to the Commissioner competence to perform forensic evaluations; and (iv) is included on a list
87 of approved evaluators maintained by the Commissioner.

88 B. Location of evaluation. — The evaluation shall be performed on an outpatient basis at a mental health
89 facility or in jail unless an outpatient evaluation has been conducted and the outpatient evaluator opines that a
90 hospital-based evaluation is needed to reliably reach an opinion or unless the defendant is in the custody of
91 the Commissioner of Behavioral Health and Developmental Services pursuant to § 19.2-169.2, 19.2-169.6,
92 19.2-182.2, 19.2-182.3, 19.2-182.8, 19.2-182.9, or Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2.

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

101 D. The competency report. — Upon completion of the evaluation, the evaluators shall promptly submit a
102 report in writing to the court and the attorneys of record concerning (i) the defendant's capacity to understand
103 the proceedings against him; (ii) the defendant's ability to assist his attorney; (iii) the defendant's need for
104 treatment in the event he is found incompetent but restorable or incompetent for the foreseeable future; and
105 (iv) if the defendant has been charged with a misdemeanor violation of Article 3 (§ 18.2-95 et seq.) of
106 Chapter 5 of Title 18.2 or a misdemeanor violation of § 18.2-119, 18.2-137, 18.2-388, 18.2-415, or 19.2-128,
107 whether the defendant should be evaluated to determine whether he meets the criteria for temporary detention
108 pursuant to § 37.2-809 in the event he is found incompetent but restorable or incompetent for the foreseeable
109 future.

110 If a need for restoration treatment is identified pursuant to clause (iii), the report shall state whether
111 inpatient or outpatient treatment (community-based or jail-based) is recommended. Outpatient treatment may
112 occur in a local correctional facility or at a location determined by the appropriate community services board
113 or behavioral health authority. In cases where a defendant is likely to remain incompetent for the foreseeable
114 future due to an ongoing and irreversible medical condition, and where prior medical or educational records
115 are available to support the diagnosis, or if the defendant was previously determined to be unrestorably
116 incompetent in the past two years, the report may recommend that the court find the defendant unrestorably
117 incompetent to stand trial and the court may proceed with the disposition of the case in accordance with §
118 19.2-169.3. No statements of the defendant relating to the time period of the alleged offense shall be included
119 in the report. The evaluator shall also send a redacted copy of the report removing references to the

120 defendant's name, date of birth, case number, and court of jurisdiction to the Commissioner of Behavioral
121 Health and Developmental Services for the purpose of peer review to establish and maintain the list of
122 approved evaluators described in subsection A.

123 E. The competency determination. — After receiving the report described in subsection D, the court shall
124 promptly determine whether the defendant is competent to stand trial. A hearing on the defendant's
125 competency is not required unless one is requested by the attorney for the Commonwealth or the attorney for
126 the defendant, or unless the court has reasonable cause to believe the defendant will be hospitalized under §
127 19.2-169.2. If a hearing is held, the party alleging that the defendant is incompetent shall bear the burden of
128 proving by a preponderance of the evidence the defendant's incompetency, *but prior to such hearing, if such*
129 *hearing is requested by the attorney for the defendant, the attorney for the Commonwealth may seek his own*
130 *competency evaluation and report pursuant to this section by another individual possessing the qualifications*
131 *described in subsection A to present at such hearing.* The defendant shall have the right to notice of the
132 hearing, the right to counsel at the hearing and the right to personally participate in and introduce evidence at
133 the hearing.

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

139 F. Finding. — If the court finds the defendant competent to stand trial, the case shall be set for trial or a
140 preliminary hearing. If the court finds the defendant either incompetent but restorable or incompetent for the
141 foreseeable future, the court shall proceed pursuant to § 19.2-169.2.