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HOUSE BILL NO. 1105

Offered January 14, 2026

Prefiled January 14, 2026

A BILL to amend and reenact §§ 19.2-169.1, 19.2-169.2, and 19.2-169.3 of the Code of Virginia, relating to competency treatment in misdemeanor proceedings.

 Patron—Kilgore

 Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-169.1, 19.2-169.2, and 19.2-169.3 of the Code of Virginia are amended and reenacted as follows:

§ 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 Commissioner.

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

C. Provision of information to evaluators. — 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 indictment; (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the defendant, and the judge ordering the evaluation; (iii) information about the alleged crime; and (iv) a summary of the reasons for the evaluation request. The court shall require the attorney for the defendant to provide any available psychiatric records and other information that is deemed relevant. The court shall require that information be provided to the evaluator within 96 hours of the issuance of the court order pursuant to this section.

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

If a need for restoration treatment is identified pursuant to clause (iii), the report shall state whether inpatient or outpatient treatment (community-based or jail-based) is recommended. Outpatient treatment may occur in a local correctional facility or at a location determined by the appropriate community services board or behavioral health authority. In cases where a defendant is likely to remain incompetent for the foreseeable future due to an ongoing and irreversible medical condition, and where prior medical or educational records are available to support the diagnosis, or if the defendant was previously determined to be unrestorably incompetent in the past two years, the report may recommend that the court find the defendant unrestorably incompetent to stand trial and the court may proceed with the disposition of the case in accordance with § 19.2-169.3. No statements of the defendant relating to the time period of the alleged offense shall be included in the report. The evaluator shall also send a redacted copy of the report removing references to the defendant's name, date of birth, case number, and court of jurisdiction to the Commissioner of Behavioral Health and Developmental Services for the purpose of peer review to establish and maintain the list of

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59 approved evaluators described in subsection A.

60 *If the defendant is charged with felony and misdemeanor charges, the court shall dismiss the*
61 *misdemeanor charges and restoration treatment may continue on the felony charges. However, if the*
62 *defendant is charged with only misdemeanor charges, the court may (a) order outpatient treatment or (b)*
63 *dismiss the charges against the defendant.*

64 E. The competency determination. — After receiving the report described in subsection D, the court shall
65 promptly determine whether the defendant is competent to stand trial. A hearing on the defendant's
66 competency is not required unless one is requested by the attorney for the Commonwealth or the attorney for
67 the defendant, or unless the court has reasonable cause to believe the defendant will be hospitalized under
68 § 19.2-169.2. If a hearing is held, the party alleging that the defendant is incompetent shall bear the burden of
69 proving by a preponderance of the evidence the defendant's incompetency. The defendant shall have the right
70 to notice of the hearing, the right to counsel at the hearing and the right to personally participate in and
71 introduce evidence at the hearing.

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

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

80 **§ 19.2-169.2. Disposition when defendant found incompetent.**

81 A. ~~Upon~~ *In any felony case, upon finding pursuant to subsection E or F of § 19.2-169.1 that the defendant,*
82 *including a juvenile transferred pursuant to § 16.1-269.1, is incompetent, the court shall order that the*
83 *defendant receive treatment to restore his competency on an outpatient basis or, if the court specifically finds*
84 *that the defendant requires inpatient hospital treatment, at a hospital designated by the Commissioner of*
85 *Behavioral Health and Developmental Services as appropriate for treatment of persons under criminal charge.*
86 *Outpatient treatment may occur in a local correctional facility or at a location determined by the appropriate*
87 *community services board or behavioral health authority. Notwithstanding the provisions of § 19.2-178, if the*
88 *court orders inpatient hospital treatment, the defendant shall be transferred to and accepted by the hospital*
89 *designated by the Commissioner as soon as practicable, but no later than 10 days, from the receipt of the*
90 *court order requiring treatment to restore the defendant's competency. If the 10-day period expires on a*
91 *Saturday, Sunday, or other legal holiday, the 10 days shall be extended to the next day that is not a Saturday,*
92 *Sunday, or legal holiday. Any psychiatric records and other information that have been deemed relevant and*
93 *submitted by the attorney for the defendant pursuant to subsection C of § 19.2-169.1 and any reports*
94 *submitted pursuant to subsection D of § 19.2-169.1 shall be made available to the director of the community*
95 *services board or behavioral health authority or his designee or to the director of the treating inpatient facility*
96 *or his designee within 96 hours of the issuance of the court order requiring treatment to restore the*
97 *defendant's competency. If the 96-hour period expires on a Saturday, Sunday, or other legal holiday, the 96*
98 *hours shall be extended to the next day that is not a Saturday, Sunday, or legal holiday.*

99 B. *In a misdemeanor case, upon a finding pursuant to subsection E or F of § 19.2-169.1 that the*
100 *defendant, including a juvenile transferred pursuant to § 16.1-269.1, is incompetent, the court may (i) order*
101 *that the defendant receive treatment to restore his competency on an outpatient basis in a local correctional*
102 *facility or at a location determined by the appropriate community services board or behavioral health*
103 *authority; (ii) order that the defendant be evaluated to determine whether he meets the criteria for temporary*
104 *detention pursuant to § 37.2-809; or (iii) dismiss the charge and release the defendant.*

105 C. If, at any time after the defendant is ordered to undergo treatment under ~~subsection~~ subsection A or B,
106 *for felony cases,* the director of the community services board or behavioral health authority or his designee
107 or the director of the treating inpatient facility or his designee believes the defendant's competency is
108 restored, the director or his designee shall immediately send a report to the court as prescribed in subsection
109 D of § 19.2-169.1. The court shall make a ruling on the defendant's competency according to the procedures
110 specified in subsection E of § 19.2-169.1.

111 ~~C. Notwithstanding the provisions of subsection A, in D.~~ In cases in which (i) the defendant has been
112 charged with a misdemeanor violation of Article 3 (§ 18.2-95 et seq.) of Chapter 5 of Title 18.2 or a
113 misdemeanor violation of § 18.2-119, 18.2-137, 18.2-388, 18.2-415, or 19.2-128; (ii) the defendant has been
114 found to be incompetent pursuant to subsection E or F of § 19.2-169.1; and (iii) the competency report
115 described in subsection D of § 19.2-169.1 recommends that the defendant be evaluated to determine whether
116 he meets the criteria for temporary detention pursuant to § 37.2-809, the court may order the community
117 services board or behavioral health authority serving the jurisdiction in which the defendant is located to (a)
118 conduct an evaluation of the defendant and (b) if the community services board or behavioral health authority
119 determines that the defendant meets the criteria for temporary detention, file a petition for issuance of an
120 order for temporary detention pursuant to § 37.2-809. The community services board or behavioral health

authority shall notify the court, in writing, within 72 hours of the completion of the evaluation and, if appropriate, file a petition for issuance of an order for temporary detention. Upon receipt of such notice, the court may dismiss the charges without prejudice against the defendant. However, the court shall not enter an order or dismiss charges against a defendant pursuant to this subsection if the attorney for the Commonwealth is involved in the prosecution of the case and the attorney for the Commonwealth does not concur in the motion.

~~D.~~ *E.* If a defendant for whom an evaluation has been ordered pursuant to subsection ~~D~~ fails or refuses to appear for the evaluation, the community services board or behavioral health authority shall notify the court and the court shall issue a mandatory examination order and *capias* directing the primary law-enforcement agency for the jurisdiction in which the defendant resides to transport the defendant to the location designated by the community services board or behavioral health authority for examination.

~~E.~~ *F.* The clerk of the court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of an order for treatment issued pursuant to ~~subsection~~ *subsection A or B*.

§ 19.2-169.3. Disposition of the unrestorably incompetent defendant; aggravated murder charge; sexually violent offense charge.

A. If, at any time after the defendant is ordered to undergo treatment pursuant to subsection *A or B* of § 19.2-169.2, the director of the community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee concludes that the defendant is likely to remain incompetent for the foreseeable future, or if the initial evaluator has found that the defendant has an ongoing and irreversible medical condition causing him to likely remain incompetent for the foreseeable future or that the defendant has been found to be unrestorably incompetent in the past two years, he shall send a report to the court so stating. The report shall also indicate whether, in the opinion of the director of the board, authority, or inpatient facility or his designee or the evaluator, the defendant should be released, ~~committed~~ *screened for possible commitment* pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, committed pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, or certified pursuant to § 37.2-806 in the event he is found to be unrestorably incompetent. Upon receipt of the report, the court shall make a competency determination according to the procedures specified in subsection D or E of § 19.2-169.1. If the court finds that the defendant is incompetent and is likely to remain so for the foreseeable future, it shall order that he be (i) released, (ii) committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or (iii) certified pursuant to § 37.2-806. However, if the court finds that the defendant is incompetent and is likely to remain so for the foreseeable future and the defendant has been charged with a sexually violent offense, as defined in § 37.2-900, he shall be screened pursuant to the procedures set forth in §§ 37.2-903 and 37.2-904. If the court finds the defendant incompetent but restorable to competency in the foreseeable future, it may order treatment continued until six months have elapsed from the date of the defendant's initial admission under subsection *A or B* of § 19.2-169.2.

B. At the end of six months from the date of the defendant's initial admission under subsection *A or B* of § 19.2-169.2 if the defendant remains incompetent in the opinion of the board, authority, or inpatient facility director or his designee, the director or his designee shall so notify the court and make recommendations concerning disposition of the defendant as described in subsection A. The court shall hold a hearing according to the procedures specified in subsection E of § 19.2-169.1 and, if it finds the defendant unrestorably incompetent, shall order one of the dispositions described in subsection A. If the court finds the defendant incompetent but restorable to competency, it may order continued treatment under subsection *A or B* of § 19.2-169.2 for additional six-month periods, provided a hearing pursuant to subsection E of § 19.2-169.1 is held at the completion of each such period and the defendant continues to be incompetent but restorable to competency in the foreseeable future.

C. If any defendant has been charged with a misdemeanor in violation of Article 3 (§ 18.2-95 et seq.) of Chapter 5 of Title 18.2 or Article 5 (§ 18.2-119 et seq.) of Chapter 5 of Title 18.2, other than a misdemeanor charge pursuant to § 18.2-130 or Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, and is being treated pursuant to subsection ~~A B~~ of § 19.2-169.2, and after 45 days has not been restored to competency, the director of the community service board, behavioral health authority, or ~~the director of the treating inpatient facility~~, or any of their designees, shall send a report indicating the defendant's status to the court. The report shall also indicate whether the defendant should be released or committed pursuant to § 37.2-817 or 37.2-817.01 or certified pursuant to § 37.2-806. Upon receipt of the report, if the court determines that the defendant is still incompetent, the court shall order that the defendant be released, committed, or certified, and may dismiss the charges against the defendant.

D. Unless an incompetent defendant is charged with aggravated murder or the charges against an incompetent criminal defendant have been previously dismissed, charges against an unrestorably incompetent defendant shall be dismissed on the date upon which his sentence would have expired had he been convicted and received the maximum sentence for the crime charged, or on the date five years from the date of his arrest for such charges, whichever is sooner.

E. If the court orders an unrestorably incompetent defendant to be screened pursuant to the procedures set

183 forth in §§ 37.2-903 and 37.2-904, it shall order the attorney for the Commonwealth in the jurisdiction
184 wherein the defendant was charged and the Commissioner of Behavioral Health and Developmental Services
185 to provide the Director of the Department of Corrections with any information relevant to the review,
186 including, but not limited to: (i) a copy of the warrant or indictment, (ii) a copy of the defendant's criminal
187 record, (iii) information about the alleged crime, (iv) a copy of the competency report completed pursuant to
188 § 19.2-169.1, and (v) a copy of the report prepared by the director of the defendant's community services
189 board, behavioral health authority, or treating inpatient facility or his designee pursuant to this section. The
190 court shall further order that the defendant be held in the custody of the Department of Behavioral Health and
191 Developmental Services for secure confinement and treatment until the Commitment Review Committee's
192 and Attorney General's review and any subsequent hearing or trial are completed. If the court receives notice
193 that the Attorney General has declined to file a petition for the commitment of an unrestorably incompetent
194 defendant as a sexually violent predator after conducting a review pursuant to § 37.2-905, the court shall
195 order that the defendant be released, committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of
196 Title 37.2, or certified pursuant to § 37.2-806.

197 F. In any case when an incompetent defendant is charged with aggravated murder and has been
198 determined to be unrestorably incompetent, notwithstanding any other provision of this section, the charge
199 shall not be dismissed and the court having jurisdiction over the aggravated murder case may order that the
200 defendant receive continued treatment under subsection A of § 19.2-169.2 in a secure facility determined by
201 the Commissioner of the Department of Behavioral Health and Developmental Services where the defendant
202 shall remain until further order of the court, provided that (i) a hearing pursuant to subsection E of
203 § 19.2-169.1 is held at yearly intervals for five years and at biennial intervals thereafter, or at any time that
204 the director of the treating facility or his designee submits a competency report to the court in accordance
205 with subsection D of § 19.2-169.1 that the defendant's competency has been restored, (ii) the defendant
206 remains incompetent, (iii) the court finds continued treatment to be medically appropriate, and (iv) the
207 defendant presents a danger to himself or others. No unrestorably incompetent defendant charged with
208 aggravated murder shall be released except pursuant to a court order.

209 G. The attorney for the Commonwealth may bring charges that have been dismissed against the defendant
210 when he is restored to competency.