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1 **HOUSE BILL NO. 1105**

2 Offered January 14, 2026

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4 *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*  
5 *competency treatment in misdemeanor proceedings.*

6 Patron—Kilgore

7 Referred to Committee for Courts of Justice

8 **Be it enacted by the General Assembly of Virginia:**9 **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**  
10 **follows:**11 **§ 19.2-169.1. Raising question of competency to stand trial or plead; evaluation and determination**  
12 **of competency.**13 A. Raising competency issue; appointment of evaluators. — If, at any time after the attorney for the  
14 defendant has been retained or appointed and before the end of trial, the court finds, upon hearing evidence or  
15 representations of counsel for the defendant or the attorney for the Commonwealth, that there is probable  
16 cause to believe that the defendant, whether a juvenile transferred pursuant to § 16.1-269.1 or adult, lacks  
17 substantial capacity to understand the proceedings against him or to assist his attorney in his own defense, the  
18 court shall order that a competency evaluation be performed by at least one psychiatrist or clinical  
19 psychologist who (i) has performed forensic evaluations; (ii) has successfully completed forensic evaluation  
20 training recognized by the Commissioner of Behavioral Health and Developmental Services; (iii) has  
21 demonstrated to the Commissioner competence to perform forensic evaluations; and (iv) is included on a list  
22 of approved evaluators maintained by the Commissioner.23 B. Location of evaluation. — The evaluation shall be performed on an outpatient basis at a mental health  
24 facility or in jail unless an outpatient evaluation has been conducted and the outpatient evaluator opines that a  
25 hospital-based evaluation is needed to reliably reach an opinion or unless the defendant is in the custody of  
26 the Commissioner of Behavioral Health and Developmental Services pursuant to § 19.2-169.2, 19.2-169.6,  
27 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 37.2.28 C. Provision of information to evaluators. — The court shall require the attorney for the Commonwealth  
29 to provide to the evaluators appointed under subsection A any information relevant to the evaluation,  
30 including, but not limited to (i) a copy of the warrant or indictment; (ii) the names and addresses of the  
31 attorney for the Commonwealth, the attorney for the defendant, and the judge ordering the evaluation; (iii)  
32 information about the alleged crime; and (iv) a summary of the reasons for the evaluation request. The court  
33 shall require the attorney for the defendant to provide any available psychiatric records and other information  
34 that is deemed relevant. The court shall require that information be provided to the evaluator within 96 hours  
35 of the issuance of the court order pursuant to this section.36 D. The competency report. — Upon completion of the evaluation, the evaluators shall promptly submit a  
37 report in writing to the court and the attorneys of record concerning (i) the defendant's capacity to understand  
38 the proceedings against him; (ii) the defendant's ability to assist his attorney; and (iii) the defendant's need for  
39 treatment in the event he is found incompetent but restorable or incompetent for the foreseeable future; and  
40 (iv) if the defendant has been charged with a ~~misdemeanor violation of Article 3 (§ 18.2-95 et seq.) of~~  
41 ~~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,~~  
42 ~~whether the defendant should be evaluated to determine whether he meets the criteria for temporary detention~~  
43 ~~pursuant to § 37.2-809 in the event he is found incompetent but restorable or incompetent for the foreseeable~~  
44 ~~future.~~45 If a need for restoration treatment is identified pursuant to clause (iii), the report shall state whether  
46 inpatient or outpatient treatment (community-based or jail-based) is recommended. Outpatient treatment may  
47 occur in a local correctional facility or at a location determined by the appropriate community services board  
48 or behavioral health authority. In cases where a defendant is likely to remain incompetent for the foreseeable  
49 future due to an ongoing and irreversible medical condition, and where prior medical or educational records  
50 are available to support the diagnosis, or if the defendant was previously determined to be unrestorably  
51 incompetent in the past two years, the report may recommend that the court find the defendant unrestorably  
52 incompetent to stand trial and the court may proceed with the disposition of the case in accordance with  
53 § 19.2-169.3. No statements of the defendant relating to the time period of the alleged offense shall be  
54 included in the report. The evaluator shall also send a redacted copy of the report removing references to the  
55 defendant's name, date of birth, case number, and court of jurisdiction to the Commissioner of Behavioral  
56 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 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

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

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

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

135 **§ 19.2-169.3. Disposition of the unrestorably incompetent defendant; aggravated murder charge;  
136 sexually violent offense charge.**

137 A. If, at any time after the defendant is ordered to undergo treatment pursuant to subsection *A or B* of  
138 § 19.2-169.2, the director of the community services board or behavioral health authority or his designee or  
139 the director of the treating inpatient facility or his designee concludes that the defendant is likely to remain  
140 incompetent for the foreseeable future, or if the initial evaluator has found that the defendant has an ongoing  
141 and irreversible medical condition causing him to likely remain incompetent for the foreseeable future or that  
142 the defendant has been found to be unrestorably incompetent in the past two years, he shall send a report to  
143 the court so stating. The report shall also indicate whether, in the opinion of the director of the board,  
144 authority, or inpatient facility or his designee or the evaluator, the defendant should be released, ~~ecommitted~~  
145 *screened for possible commitment* pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2,  
146 committed pursuant to Chapter 9 (§ 37.2-900 et seq.) of Title 37.2, or certified pursuant to § 37.2-806 in the  
147 event he is found to be unrestorably incompetent. Upon receipt of the report, the court shall make a  
148 competency determination according to the procedures specified in subsection D or E of § 19.2-169.1. If the  
149 court finds that the defendant is incompetent and is likely to remain so for the foreseeable future, it shall  
150 order that he be (i) released, (ii) committed pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title  
151 37.2, or (iii) certified pursuant to § 37.2-806. However, if the court finds that the defendant is incompetent  
152 and is likely to remain so for the foreseeable future and the defendant has been charged with a sexually  
153 violent offense, as defined in § 37.2-900, he shall be screened pursuant to the procedures set forth in  
154 §§ 37.2-903 and 37.2-904. If the court finds the defendant incompetent but restorable to competency in the  
155 foreseeable future, it may order treatment continued until six months have elapsed from the date of the  
156 defendant's initial admission under subsection *A or B* of § 19.2-169.2.

157 B. At the end of six months from the date of the defendant's initial admission under subsection *A or B* of  
158 § 19.2-169.2 if the defendant remains incompetent in the opinion of the board, authority, or inpatient facility  
159 director or his designee, the director or his designee shall so notify the court and make recommendations  
160 concerning disposition of the defendant as described in subsection A. The court shall hold a hearing  
161 according to the procedures specified in subsection E of § 19.2-169.1 and, if it finds the defendant  
162 unrestorably incompetent, shall order one of the dispositions described in subsection A. If the court finds the  
163 defendant incompetent but restorable to competency, it may order continued treatment under subsection *A or  
164 B* of § 19.2-169.2 for additional six-month periods, provided a hearing pursuant to subsection E of  
165 § 19.2-169.1 is held at the completion of each such period and the defendant continues to be incompetent but  
166 restorable to competency in the foreseeable future.

167 C. If any defendant has been charged with a misdemeanor in violation of Article 3 (§ 18.2-95 et seq.) of  
168 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  
169 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  
170 pursuant to subsection *A B* of § 19.2-169.2, and after 45 days has not been restored to competency, the  
171 director of the community service board, behavioral health authority, or ~~the director of the~~ treating inpatient  
172 facility, or any of their designees, shall send a report indicating the defendant's status to the court. The report  
173 shall also indicate whether the defendant should be released or committed pursuant to § 37.2-817 or  
174 37.2-817.01 or certified pursuant to § 37.2-806. Upon receipt of the report, if the court determines that the  
175 defendant is still incompetent, the court shall order that the defendant be released, committed, or certified,  
176 and may dismiss the charges against the defendant.

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

182 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.