HJR 626: Disposition of Unrestorably Incompetent Criminal Defendants

July 25, 2011

Overview

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Study Authorization

- House Joint Resolution 626, introduced by Delegate Rob Bell during the 2011 Regular Session of the General Assembly, requested the Crime Commission to study the issue of unrestorably incompetent criminal defendants.
  - Are the available disposition options adequate to deal with these defendants?

Background

- When a criminal defendant is found by a court to be incompetent to stand trial, he is ordered to receive treatment to restore his competency. Va. Code § 19.2-169.2.
  - Note that this is not the same as when a defendant argues he is not guilty by reason of insanity.
- If the treatment provider reports to the court that the defendant is likely to remain incompetent for the foreseeable future, the court shall then make a second competency determination. Va. Code § 19.2-169.3(A).

Background

- If the court agrees with the assessment of the treatment provider that the defendant is incompetent and is likely to remain so for the foreseeable future, then there are four options:
  - The defendant is released;
  - The defendant is civilly committed, pursuant to the regular involuntary civil commitment process;
  - The defendant is certified as being mentally retarded and eligible for admission to a training center; or,
  - If the crime involved is a sexually violent offense, the defendant shall be reviewed for possible commitment as a sexually violent predator.

Legal Issue

- The standard for a person to be civilly committed involuntarily is that the judge or special justice finds, by clear and convincing evidence, that:
  - The person is mentally ill, and there is a substantial likelihood that in the near future, the person will cause serious physical harm to himself or others, or will suffer serious harm due to his inability to care for himself; and,
  - There are no available less restrictive treatment alternatives.

- This standard, found in Va. Code § 37.2-817(C), was created in 2008 as an easier standard to meet than the previous standard of "imminent danger."

Legal Issue

- What happens if the unrestorably incompetent defendant has an involuntary commitment hearing, and is found to not meet the requirements for involuntary commitment?
  - He would be released, and if he were dangerous, there is the potential that he could commit another crime.

Policy Issues

- Currently, the criminal incompetency statutes cross-reference directly with the general involuntary civil commitment statutes.
- Does this provide enough protection for the public?
- Should a different standard be created for those respondents who are facing civil commitment as a result of a prior criminal charge that has been postponed or dismissed due to a finding of incompetency?

Policy Issues

If a different standard is used, what should it be?

- A standard similar to that used for sexually violent predators: because of his mental illness, the defendant finds it difficult to control his violent or predatory behavior, which makes him likely to engage in violent acts? (Similar to Va. Code § 37.2-900).
- The standard used for determining the release of a mental patient after involuntary civil commitment: the defendant will engage in behavior that is detrimental to the public welfare or injurious to himself? (Similar to Va. Code §§ 37.2-837 and 37.2-838).
  - Note: this standard is not used in legal proceedings, but is used by the director of a hospital or facility to determine if the patient can be discharged.
- Or, should the standard be "cause physical harm to himself or others," rather than "serious physical harm?"

Policy Issues

- Note that if the standard for unrestorably incompetent defendants is modified, it will still have to be established using a clear and convincing burden of proof. Addington v. Texas, 441 U.S. 418 (1979).

Discussion