GEORGE MASON AMERICAN INN OF COURT
February 15, 2023
GENERAL DISTRICT COURT
SELECTED UPDATES AND BEST PRACTICES

STUDENT PRESENTERS:

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Overview of Materials

I. Civil jurisdictional statutory changes
II. Competency issues in the GDC
    i. Competency forms
    ii. Involuntary commitment
III. Protective Orders
IV. Time, procedure, counsel involvement
V. Probation Violations
VI. Landlord/Tenant updates
VII. Clerk Issues
VIII. Views from the Bench + Miscellaneous changes in the various jurisdictions

I. JURISDICTION

GDC has jurisdiction over three types of cases as provided in the Virginia Code:

- Civil
    - Criminal misdemeanors and preliminary hearings
    - Traffic misdemeanors and preliminary hearings
        - Note that the jurisdiction for Criminal and Traffic cases are from the same statute, but because of the volume of traffic cases, it is often thought of separately
- Civil
    - Basic civil jurisdiction for the GDC is provided for in §16.1-77 through §16.1-77.2, and §16.1-122.1 through §16.1-122.7

- **The basic jurisdiction for most civil cases is in §16.1-77:**

(1) Exclusive original jurisdiction of (i) any claim to specific personal property or to any debt, fine or other money, or to damages for breach of contract or for injury done to property, real or personal, when the amount of such claim does not exceed $4,500, exclusive of interest and any attorney fees, and concurrent jurisdiction with the circuit courts having jurisdiction in such territory of any such claim when the amount thereof exceeds $4,500 but does not exceed $25,000, exclusive of interest and any attorney fees, and (ii) any action for injury to person, regardless of theory, and any action for wrongful death as provided for in Article 5 (§ 8.01-50 et seq.) of Chapter 3 of Title 8.01 when the amount of such claim does not exceed $4,500, exclusive of interest and any attorney fees, and concurrent jurisdiction with the circuit courts having jurisdiction in such territory of any such claim when the amount thereof exceeds $4,500 but does not exceed $50,000, exclusive of interest and any attorney fees. However, the jurisdictional limit shall not apply with respect to distress warrants under the provisions of § 8.01-130.4, cases involving liquidated damages for violations of vehicle weight limits pursuant to § 46.2-1135, nor cases

involving forfeiture of a bond pursuant to § 19.2-143. While a matter is pending in a general district court, upon motion of the plaintiff seeking to increase the amount of the claim, the court shall order transfer of the matter to the circuit court that has jurisdiction over the amended amount of the claim without requiring that the case first be dismissed or that the plaintiff suffer a nonsuit, and the tolling of the applicable statutes of limitations governing the pending matter shall be unaffected by the transfer. Except for good cause shown, no such order of transfer shall issue unless the motion to amend and transfer is made at least 10 days before trial. The plaintiff shall pay filing and other fees as otherwise provided by law to the clerk of the court to which the case is transferred, and such clerk shall process the claim as if it were a new civil action. The plaintiff shall prepare and present the order of transfer to the transferring court for entry, after which time the case shall be removed from the pending docket of the transferring court and the order of transfer placed among its records. The plaintiff shall provide a certified copy of the transfer order to the receiving court.

(2) Jurisdiction to try and decide attachment cases when the amount of the plaintiff's claim does not exceed $25,000 exclusive of interest and any attorney fees.

(3) Jurisdiction of actions of unlawful entry or detainer as provided in Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01, and in Chapter 14 (§ 55.1-1400 et seq.) of Title 55.1, and the maximum jurisdictional limits prescribed in subdivision (1) shall not apply to any claim, counter-claim or cross-claim in an unlawful detainer action that includes a claim for damages sustained or rent against any person obligated on the lease or guarantee of such lease.

(4) Except where otherwise specifically provided, all jurisdiction, power and authority over any civil action or proceeding conferred upon any general district court judge or magistrate under or by virtue of any provisions of the Code.

(5) Jurisdiction to try and decide suits in interpleader involving personal or real property where the amount of money or value of the property is not more than the maximum jurisdictional limits of the general district court. However, the maximum jurisdictional limits prescribed in subdivision (1) shall not apply to any claim, counter-claim, or cross-claim in an interpleader action that is limited to the disposition of an earnest money deposit pursuant to a real estate purchase contract. The action shall be brought in accordance with the procedures for interpleader as set forth in § 8.01-364. However, the general district court shall not have any power to issue injunctions. Actions in interpleader may be brought by either the stakeholder or any of the claimants. The initial pleading shall be either by motion for judgment, by warrant in debt, or by other uniform court form established by the Supreme Court of Virginia. The initial pleading shall briefly set forth the circumstances of the claim and shall name as defendant all parties in interest who are not parties plaintiff.

(6) Jurisdiction to try and decide any cases pursuant to § 2.2-3713 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) or § 2.2-3809 of the Government

Data Collection and Dissemination Practices Act (§ 2.2-3800et seq.), for writs of mandamus or for injunctions.

(7) Jurisdiction to try and decide any cases pursuant to § 55.1-1819 of the Property Owners' Association Act (§ 55.1-1800 et seq.) or § 55.1-1959 of the Virginia Condominium Act (§ 55.1-1900 et seq.).

(8) Concurrent jurisdiction with the circuit courts to submit matters to arbitration pursuant to Chapter 21 (§ 8.01-577 et seq.) of Title 8.01 where the amount in controversy is within the jurisdictional limits of the general district court. Any party that disagrees with an order by a general district court granting an application to compel arbitration may appeal such decision to the circuit court pursuant to § 8.01-581.016. For purposes of this section, the territory served by a county general district court expressly authorized by statute to be established in a city includes the general district court courtroom.

As a result of enhanced civil jurisdiction in personal injury cases, the GDC is seeing an increase in such trials. Along with that expansion, there appears to be a corresponding increase in Requests for Subpoenas Duces Tecum, both attorney and court issued.

Subpoenas Duces Tecum: authorization for issuance by the General District Court is found in Section 16.1-69.25, and Section 16.1-89, issuance may be to a party or non-party. 16.-89 further deals with obtaining specific documents, as well as producing electronically stored data, and does so under the guise of Rule 4:9(A).

Rule 7A:12 deals with the filing requirements and timing, and 7A:10 sets forth the service requirements on opposition.

Question: Is there really any guidance/authority for limitations or what can/cannot be requested? Is the Subpoena Duces Tecum being used as a substitute for a Request for Production of Documents and Things issued in the Circuit Court, pursuant to Rule 4:9(A)? Rule 4:1 limits discovery to that which is RELEVANT, and further, in its preamble, Rule 4:0 specifically restricts the Rules' application to the Circuit Court.

II. COMPENTENCY ISSUES IN THE GDC

§ 19.2-169.1. (Effective until July 1, 2023) 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.
Responsibility of the Attorney – File a 169.1 Motion. The motion paperwork in Fairfax County has all the information required in a fillable form. You will need to fill out the generic motion form, and then the second sheet (the Request for Forensic Evaluation). The motion will not be accepted unless both sheets are submitted to the Clerk's Office. (See attachment).

Please note:

- a 169.1 Evaluation is REQUIRED before a 169.2 treatment order can be fulfilled. When starting the Competency Process, you must first motion for a 169.1 evaluation.
- It can be the case that if the defendant is currently incarcerated, but has a secured bond set, that said bond may be revoked by the Judge. This is to ensure the defendant will not leave the jail prior to their evaluation.

Responsibility of the Clerk's Office – once the motion has been granted, the Clerk's Office will choose an evaluator from a pre-approved list given to them by the Supreme Court of Virginia. While the list has evaluators all over Virginia, the Clerk's Office has created their own proprietary list of local evaluators.

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.
Please note – the majority of evaluations in Fairfax County are performed either in the jail, or outpatient. Either way, they are currently being done remotely.

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.

The Attorney's Responsibility – Information about the evaluation, which evaluator has been chosen, the evaluator's contact information, and the location of the evaluation will all be sent to the Attorney and the Commonwealth Attorney via email. It is the attorney's responsibility to provide the Evaluator (not the Clerk's Office) with any available evidence that is deemed relevant to the evaluation. You are required to do so within 96 hours of receiving the information email.

It is also necessary for the Attorney to facilitate the scheduling of the evaluation. You must either contact the ADC to set up the remote appointment (instructions will be included in the sent email) or to coordinate with the Evaluator for outpatient and ensure your client shows up to the appointment.

The Clerk's Office Responsibility – After finding the evaluator, all proper state paperwork will be processed and sent to the appropriate facilities and parties.

The Commonwealth Attorney's Responsibility – The Office of the Commonwealth Attorney now has the requirement of submitting all requested paperwork numbered (i) – (iv) in the statue. To avoid any ex-parte communication, the ACWA's office will be included on all emails sent to the attorney and relevant agencies. They are also required to do so within 96 hours of receiving the information email.

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 … 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.

There is more to this code section (see attachment) but it skips ahead a bit. At this point in the process, a report will be sent to the Commonwealth Attorney, the Defense Attorney, and the Clerk's Office via email and fax.

The Clerk's Office Responsibility – The Clerk's Office in Fairfax County will at this point in the process determine the next court date for the review hearing. We have set court dates specifically for competency cases on the 1st and 3rd Thursday of every month. It is the order of the Clerk's Office that any evaluations that are received are then set on the next available court date. This may mean some court dates are advanced.

The Attorney's Responsibility – To review the report and determine next steps. More explained below in subsection E. For now, the Clerk's Office will also send a copy of the report, ensuring the attorney's receipt, and inform the parties of any advanced court dates that may have been set.

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

F. Finding. — If the court finds the defendant competent to stand trial, the case shall be set for trial or a preliminary hearing. If the court finds the defendant either incompetent but restorable or incompetent for the foreseeable future, the court shall proceed pursuant to § 19.2-169.2.
While the code section *allows* for a hearing, in Fairfax County it is automatically set on the Competency Docket regardless of the finding.

There are multiple outcomes of the determination for which counsel should be prepared:

- The defendant is found competent – when this is the case, then a trial date will be set back on either the misdemeanor docket or the preliminary hearing docket and the case will move forward as per usual.
- The defendant is found incompetent – the court will then hear testimony from CSB, the attorney, and the Commonwealth on what is the best means moving forward, and if necessary execute a 169.2 order for treatment. If the defendant is incarcerated, they will

be sent to a local mental health facility (usually Western State). If the defendant is out on bond, it will be decided whether revoking the bond for inpatient treatment is appropriate, or if the defendant is capable of outpatient treatment with CSB.

- The report was inconclusive – if the evaluator was unable to meet with the defendant, or was unresponsive to the point where an evaluation was impossible, it is up to the parties and court to decide the appropriate next steps. Either giving the evaluator more time to try performing another evaluation, or attempting an inpatient evaluation instead which requires the defendant's bond to be revoked in order to have them sent to a local mental health facility. 1982, c. 653; 1983, c. 373; 1985, c. 307; 2003, c. 735; 2007, c. 781; 2009, cc. 813, 840; 2014, cc. 329, 739; 2016, c. 445; 2018, c. 367; 2020, cc. 299, 937, 1121; 2021, Sp. Sess. I, c. 316; 2022, c. 508.

§ 19.2-169.2. (Effective until July 1, 2023) Disposition when defendant found incompetent.

A. Upon finding pursuant to subsection E or F of § 19.2-169.1 that the defendant… is incompetent, the court shall order that the defendant receive treatment to restore his competency on an outpatient basis or, if the court specifically finds that the defendant requires inpatient hospital treatment, at a hospital designated by the Commissioner of Behavioral Health … Outpatient treatment may occur in a local correctional facility or at a location determined by the appropriate community services board or behavioral health authority ... Any psychiatric records and other information that have been deemed relevant and submitted by the attorney for the defendant pursuant to subsection C of § 19.2-169.1 and any reports submitted pursuant to subsection D of § 19.2-169.1 shall be made available to the director of the community services board or behavioral health authority or his designee or to the director of the treating inpatient facility or his designee within 96 hours of the issuance of the court order requiring treatment to restore the defendant's competency.

Clerk's Office Responsibility – When a 169.2 Treatment Order is executed, the Clerk's Office will process all required state paperwork and have it sent to the appropriate facilities. For incarcerated defendants, this includes the ADC so the Sheriffs can properly prepare for the defendant's transportation

* **Please Note** – included in our orders is a form (SP-237) that is filled out and sent to the Virginia State Police. This form informs the VSP of the incompetent report and treatment requirement and bars the defendant from the purchase, possession, or transport of any firearm. Attorney's Responsibility – The same information sent to the evaluator will now need to be sent to the facility that in performing the treatment on the incompetent patient. Treatment is ordered

for 6 months, so the next court date will be set for 3 months out on a Competency Docket to review the defendant's progress at that time.

* **Please Note** – any charges that fall under 19.2-169.3(c) will only receive 45 days treatment on any 169.2 orders before a determination must be made. *

Treatment Facility's Responsibility – Currently the treatment facilities have are experiencing an influx of patients. Regardless, they are still required by statute to have transported the defendant to their facility within 10 days of receiving the order. If for any reason this action has not been fulfilled within those 10 days, the parties will be informed, and next steps will be determined.

B. If, at any time after the defendant is ordered to undergo treatment under subsection A, 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 believes the defendant's competency is restored, the director or his designee shall immediately send a report to the court as prescribed in subsection D of § 19.2-169.1. The court shall make a ruling on the defendant's competency according to the procedures specified in subsection E of § 19.2-169.1.

Restoration reports can come at any time. They will be sent to the Commonwealth, Attorney, and Clerk's Office.

Clerk's Office – the moment a restoration report arrives, the Clerk's Office will pull the case, and reset it to the nearest Competency Hearing court date. It is imperative that the defense counsel be flexible with an advanced court date as restored defendants are sent back to the ADC quickly after the report is disseminated. As with Competency Evaluations, the report will be sent to all parties via email to ensure receipt along with notice of the advanced court date.

Once a defendant has been deemed restored, the same actions as a competent defendant are taken. A trial date is set on the misdemeanor docket or on the preliminary hearing docket and the case will move forward as usual.

If for any reason the Competency Report or Restoration Report is being contested by either party, a hearing will be set with the evaluators called to testify and the court to determine the necessary next steps.

C. Notwithstanding the provisions of subsection A, in cases in which (i) 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; (ii) the defendant has been found to be incompetent pursuant to subsection E or F of § 19.2-169.1; and (iii) the competency report described in subsection D of § 19.2-169.1 recommends that the defendant be temporarily detained pursuant to § 37.2-809, the court may dismiss the charges without prejudice against the defendant and, in lieu of ordering the defendant receive treatment to restore his competency, order the community services board or behavioral health authority serving the jurisdiction in which the defendant is located to (a) conduct an evaluation of the defendant and (b) if the community services board or behavioral health authority determines that the defendant meets the criteria for temporary detention, file a petition for issuance of an order for temporary detention pursuant to § 37.2-809. However, the court shall not dismiss charges and enter an order 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. This is the newest provision of the 169.2 code that allows for a dismissal of the charges and a Temporary Detention Order to be issued. It depends on your jurisdiction as to how this process is handled. Please note that Temporary Detention Orders can result in three things: (1) A dismissal as the Special Justice has found no reason for treatment; (2) a voluntary commitment by the defendant, which will only hold them in the facility for 10 days; or (3) an involuntary commitment by the Special Justice that will hold the defendant for 30 days.

D. The clerk of the court shall certify and forward forthwith to the Central Criminal Records Exchange, on

[This subsection is part of 169.1 – but comes at this part of the process so it's been moved here so the timeline make sense:]

19.2-169.1 (D)

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. In cases where a 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 and is incompetent, the report may recommend that the court direct the community services board or

behavioral health authority for the jurisdiction in which the defendant is located to (a) conduct an evaluation of the defendant in accordance with subsection B of § 37.2-808 to determine whether the defendant meets the criteria for temporary detention and (b) upon determining that the defendant does meet the criteria for temporary detention, file a petition for issuance of an order for temporary detention of the defendant in accordance with § 37.2-809.

There are several ways a defendant can be found unrestorable:

- After 6 months treatment from a 169.2 order the mental health facility deems the defendant unrestorable due to an ongoing mental illness (that is supported by medical records); or
- The defendant has already been deemed unrestorable within the past 2 years, expediting the process and obviating the need for a 169.1 evaluation and treatment

Here the new changes can also be seen – if the case falls under one of the prescribed code sections, then a TDO (temporary detention order) can be issued in lieu of performing a 169.3 Order. Again, this will depend on your jurisdiction and how they handle any TDO motions.

The 169.3 Code section has been included in the Competency attachments for your perusal. But the basic outcomes are:

- If the court finds that the defendant is unrestorable, it shall order that he be (i) released, (ii) committed to a mental health facility or (iii) certified pursuant to § 37.2-806.
- If the court finds that the defendant is unrestorable 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 any defendant that has been charged with a misdemeanor § 18.2-95 et seq, or § 18.2-119 et seq, is being treated pursuant to subsection A of § 19.2-169.2, and after 45 days has not been restored to competency, the director of the treating facility shall send a report indicating the defendant's status to the court. 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.
- 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.

The premade 169.3 form for Fairfax County is also included in the Competency Attachment.

III. PROTECTIVE ORDERS

Protective Orders in cases of stalking, sexual battery and acts of violence

- The GDC has authority to extend a protective order in all cases not falling under the jurisdiction of the JDR.
    - **§16.1-241(J)** defines the JDR jurisdiction as cases involving offenses in which one family or household member is charges with an offense in which another is the victim
    - Protective orders in the GDC generally involve parties who were in a dating relationship who did not reside together and do not have children in common.
- **§19.2-152.9** Preliminary Protective Orders
    - "Upon the filing of a petition … the court may issue a preliminary protective order against the alleged perpetrator in order to protect the health and safety of the petitioner or any family or household member of the petitioner."
        - These protective orders last until a hearing may occur, which can be no longer than 15 days from when the protective order is issued
- **§19.2-152.10** Protective Orders
    - "The court may issue a protective order pursuant to this chapter to protect the health and safety of the petitioner and family or household members of a petitioner."
- **§ 19.2-152.9.** Preliminary protective orders.
    - A. Upon the filing of a petition … the court may issue a preliminary protective order against the alleged perpetrator in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. If an ex parte order is issued without an affidavit or a completed form as prescribed by subsection D of § 19.2-152.8 being presented, the court, in its order, shall state the basis upon which the order was entered, including a summary of the allegations made and the court's findings. Immediate

and present danger of any act of violence, force, or threat or evidence sufficient to establish probable cause that an act of violence, force, or threat has recently occurred shall constitute good cause.

- A preliminary protective order may include any one or more of the following conditions to be imposed on the respondent:
  - 1. Prohibiting acts of violence, force, or threat or criminal offenses that may result in injury to person or property;
  - 2. Prohibiting such other contacts by the respondent with the petitioner or the petitioner's family or household members as the court deems necessary for the health and safety of such persons;
  - 3. Such other conditions as the court deems necessary to prevent (i) acts of violence, force, or threat, (ii) criminal offenses that may result in injury to person or property, or (iii) communication or other contact of any kind by the respondent; and
  - 4. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500.

- B. The preliminary order shall specify a date for the full hearing. The hearing shall be held within 15 days of the issuance of the preliminary order, unless the court is closed pursuant to § 16.1-69.35 or 17.1-207 and such closure prevents the hearing from being held within such time period, in which case the hearing shall be held on the next day not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed…If the respondent fails to appear at this hearing because the respondent was not personally served, the court may extend the protective order for a period not to exceed six months. The extended protective order shall be served as soon as possible on the respondent. However, upon motion of the respondent and for good cause shown, the court may continue the hearing. The preliminary order shall remain in effect until the hearing. … The order shall further specify that either party may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court. Upon petitioner's motion to dissolve the preliminary protective order, a dissolution order may be issued ex parte by the court with or without a hearing. If an ex parte hearing is held, it shall be heard by the court as soon as practicable. If a dissolution order is issued ex parte, the court shall serve a copy of such dissolution order on respondent in conformity with §§ 8.01-286.1 and 8.01-296.

- **§ 19.2-152.10.** Protective order.
    - A. The court may issue a protective order pursuant to this chapter to protect the health and safety of the petitioner and family or household members of a petitioner upon (i) the issuance of a petition or warrant for, or a conviction of, any criminal offense resulting from the commission of an act of violence, force, or threat or (ii) a hearing held pursuant to subsection D of § 19.2-152.9. A protective order issued under this section may include any one or more of the following conditions to be imposed on the respondent:
        - 1. Prohibiting acts of violence, force, or threat or criminal offenses that may result in injury to person or property;
        - 2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons;
        - 3. Any other relief necessary to prevent (i) acts of violence, force, or threat, (ii) criminal offenses that may result in injury to person or property, or (iii) communication or other contact of any kind by the respondent; and
        - 4. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500.
    - B. Except as provided in subsection C, the protective order may be issued for a specified period of time up to a maximum of two years. The protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Prior to the expiration of the protective order, a petitioner may file a written motion requesting a hearing to extend the order. Proceedings to extend a protective order shall be given precedence on the docket of the court. The court may extend the protective order for a period not longer than two years to protect the health and safety of the petitioner or persons who are family or household members of the petitioner at the time the request for an extension is made. The extension of the protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Nothing herein shall limit the number of extensions that may be requested or issued.

IV. PROBATION VIOLATIONS

Probation violations are governed by Code § 19.2-306

Code § 19.2-306 A – the court may revoke "for **any cause the court deems sufficient**" *that occurred within the probation period, or with the period of suspension fixed by the court.* If there is no probation period or period of suspension fixed by the court discernable from the paperwork, the revocation must occur within the maximum period for which the defendant might originally have been sentenced.
The court may extend probation, after a hearing, but must order the extension of probation before the termination of the current probationary period.

Code § 19.2-306 B – Court may conduct a probation revocation hearing following **process** (a show cause) **issued** to the defendant **within 90 days of receiving notice of the alleged violation or within one year after the expiration of the probation period or period of suspension of sentence, whichever is sooner, or if the matter involves failure to pay restitution, within three years after the expiration of the probationary period**.

Code § 19.2-306 C – If the court, after hearing, finds **good cause** to believe that the defendant has violated the terms of suspension, the court can revoke the suspension and impose a sentence in accordance with the provisions of § 19.2-306.1. The court may again suspend all or part of the original sentence for a period **up to the statutory maximum for which the defendant might originally have been sentenced, less any time already served**, and may place the defendant on terms and conditions or probation.

Code § 19.2-306 D – If the court finds no cause to impose the sentence that might have been imposed originally, or to revoke the suspension, any further revocation hearing may not be based upon the same violation.

§ 19.2-306.1. Limitation on sentence upon revocation of suspension of sentence; exceptions

The first paragraph defines "technical violation" to mean:

A. For the purposes of this section, "technical violation" means a violation based on the probationer's failure to

(i) report any arrest, including traffic tickets, within three days to the probation officer;
(ii) maintain regular employment or notify the probation officer of any changes in employment;
(iii) report within three days of release from incarceration;
(iv) permit the probation officer to visit his home and place of employment;
(v) follow the instructions of the probation officer, be truthful and cooperative, and report as instructed;
(vi) refrain from the use of alcoholic beverages to the extent that it disrupts or interferes with his employment or orderly conduct;
(vii) refrain from the use, possession, or distribution of controlled substances or related

paraphernalia;
(viii) refrain from the use, ownership, possession, or transportation of a firearm;
(ix) gain permission to change his residence or remain in the Commonwealth or other designated area without permission of the probation officer; or
(x) maintain contact with the probation officer whereby his whereabouts are no longer known to the probation officer. Multiple technical violations arising from a single course of conduct or a single incident or considered at the same revocation hearing shall not be considered separate technical violations for the purposes of sentencing pursuant to this section.

The second paragraph directs a court to determine the "basis of a violation."

The third paragraph restricts a court's sentencing authority for technical violations.

The fourth paragraph provides that "the limitations on sentencing in this section shall not apply to the extent that an additional term of incarceration is necessary to allow a defendant to be evaluated for" certain treatment programs.

New Legislation pending on this issue in VA - HB2013 Probation, revocation, and suspension of sentence; penalty.

V. LANDLORD / TENANT UPDATES

- Cares ACT Remaining Issues
- Petition for a Writ of Prohibition Bonner Matter
- Reversion to 5-day notice and CARES ACT

VI. CLERK ISSUES

- Courtesy to the clerks
- Each courts particular procedure requirements
- Clerks cannot give legal advice
- Copies front and back/scanning

Local jurisdictions update to local practices

Alexandria GDC-

- Both judges will hear civil trials every Thursday.
- This change is in response to the avalanche of unlawful detainer cases we have at the moment and we will revisit the need for double dockets at some point in the future.

Arlington GDC-

- Beginning January 1, 2023 all in custody defendants will be present in the courtroom for prelims
- We also have a status docket for criminal matter on Tuesdays and Thursdays at 9:00 am.
- These are cases set for review on competency, general continuance dispositions, and cases advanced for disposition.
- We also are going to begin civil dockets at 9:00 am. They were set at 10:00 originally in order to assist with large traffic court dockets.

Prince William GDC-

- Moved afternoon 1:00pm civil cases to courtrooms 1 and 6; they were previously being heard in courtrooms 3 and 4 which presented a problem due to criminal spilling over.
- Civil docket is segmented as follows:
    - Monday/Wednesday- 9:00 am UD trials and returns; 11:00 and 1:00 pm post judgment
    - Tuesdays- 9:00 pro se Unlawful Detainers; 10:00 Small Claims; 11:00 am & 1:00 pm Attorney W/D and other first returns
    - Thursdays- 9:00 am; 11:00am and 1:00 pm Attorney W/D and other first returns
    - Fridays- 9:00 am UD trials; 11:00 am and 1:00 pm Attorney Unlawful Detainer first Returns
    - Every day at 1:30 pm is our civil trial docket (Tuesdays are for pro se trials)

Fairfax Remote Hearing policy

- On August 29, 2022, the Fairfax County General District Court entered an amended Order for Video and Telephone Hearings. It describes the requirements and procedures that need to be followed to request a remote hearing.
- Depending on the type of hearing, you may appear by telephone or Webex. The Order above, as well as the Summary of Remote Hearing Eligibility, contain the detailed listing of which types of hearings fall under which option.
- If you are eligible per the Order/Summary, the forms you should use are:

- Motion for Civil Video Hearing
- Request for Phone Hearing - 2A

You can use Webex's Testing Site to verify if your device supports Webex. It is your responsibility to ensure that you have the proper equipment and environment to appear by phone or Webex.

Fairfax Long trials with status order

- Any contested case that is expected to take two or more hours to complete should be brought to the attention of the judge or clerk's office on the first return date or time of selecting a trial date so that special docketing arrangements can be made.
- Prior to selection of a long trial date a Long Trial Status Order will be entered by the court. The parties will be given a status hearing date to ensure all requirements in the Order have been completed. A long trial date will be selected at the status hearing.
- If an interpreter is needed for a long trial, the party requesting the interpreter is responsible for making the request to the court.
- If a case scheduled on the long trial calendar settles early, the plaintiff must notify the clerk's office so that the trial date can be released for future use.

Fairfax Substantive Motions Docket for GDC

- All such pleadings shall be heard in open court. Form, notice, and any required fee shall be as prescribed by law. Five days' notice is required to the opposing party and the court. Motions may be typed by either party, may be filed on the General Notice and Motion Form or may be filed on one of the appropriate forms provided by the Supreme Court of Virginia (located here).
- Emergency Motions will be heard at 9:30AM Monday-Friday.
- Non-substantive motions can be filed on the regularly scheduled 2A return docket in the AM or PM and will be heard with the plaintiff's cases. Fridays are reserved for landlord/tenant and small claims motions.
- Substantive motions will be heard on Wednesday at 1:00PM. Limit of one substantive motion per case per court date. Time limit of 20 minutes per motion (longer motion will need to be specially set for the 9:30 shared float courtroom). Substantive motions include:
    - Demurrers
    - Pleas in Bar
    - Motions Objecting to Jurisdiction
    - Motions to Transfer Venue if accompanied by a memorandum in support
    - Motions to Dismiss
    - Motions to Quash Process
    - Motions Craving Oyer
    - Motions to Compel Arbitration

- Motion for Sanctions
- Motions for Summary Judgment if accompanied by a memorandum in support
- Motions to Transfer Jurisdiction
- Any Motion Accompanied by a memorandum in support

Traffic Motions heard at 9:00 a.m. each day in courtroom 1D

Criminal Motions are heard in 2J after bonds and arraignments.

APPENDICES

§ 16.1-69.25. Judge may issue warrants, summons, and subpoenas.

Except as otherwise provided by general law, a judge of a district court may, within the scope of his general jurisdiction, issue warrants, summons, and subpoenas, including subpoenas duces tecum or other process, in civil, traffic and criminal cases, to be returned before his court, and may also issue fugitive warrants and conduct proceedings thereon in accordance with the provisions of §§ 19.2-99 through 19.2-104.

§ 16.1-89. Subpoena duces tecum; attorney-issued subpoena duces tecum.

A judge or clerk of a district court may issue a subpoena duces tecum pursuant to the terms of Rule 4:9A of the Rules of the Supreme Court of Virginia except that such subpoena may be directed to a party to the case as well as to a person who is not a party.

Subpoenas duces tecum for medical records issued by an attorney shall be subject to the provisions of §§ 8.01-413 and 32.1-127.1:03 except that no separate fee for issuance shall be imposed.

A subpoena duces tecum may also be issued by an attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. Any such subpoena duces tecum shall be on a form approved by the Committee on District Courts, signed by the attorney as if a pleading and shall include the attorney's address. A copy, together with the attorney's certificate of service pursuant to Rule 1:12, shall be mailed or delivered to the clerk's office of the court in which the case is pending on the day of issuance by the attorney. The law governing subpoenas duces tecum issued by a clerk shall apply mutatis mutandis, except that attorneys may not issue subpoenas duces tecum in those cases in which they may not issue a summons as provided in § 8.01-407. A sheriff shall not be required to serve an attorney-issued subpoena that is not issued at least five business days prior to the date production of evidence is desired. When an attorney-at-law transmits one or more subpoenas duces tecum to a sheriff to be served in his jurisdiction, the provisions in § 8.01-407 regarding such transmittals shall apply.

If the time for compliance with a subpoena duces tecum issued by an attorney is less than 14 days after service of the subpoena, the person to whom it is directed may serve upon the party issuing the subpoena a written objection setting forth any grounds upon which such production, inspection or testing should not be had. If objection is made, the party on whose behalf the subpoena was issued and served shall not be entitled to the requested production, inspection or testing, except pursuant to an order of the court, but may, upon notice to the person to whom the

subpoena was directed, move for an order to compel production, inspection or testing. Upon such timely motion, the court may quash, modify or sustain the subpoena

Rule 7A:12 - Requests for Subpoenas for Witnesses and Records**(a)***Subpoenas for Witnesses:***(1)** Requests for subpoenas for witnesses should be filed at least ten days prior to trial.**(2)** Requests for subpoenas for witnesses not timely filed should not be honored except when authorized by the court for good cause.**(b)***Subpoenas Duces Tecum:***(1)** Requests for subpoenas duces tecum should be filed at least 15 days prior to trial.**(2)** Requests for subpoenas duces tecum not timely filed should not be honored except when authorized by a judge for good cause.**(c)***Meaning of Filed:* The term filed as used in this Rule means received in the appropriate clerk's office or by an appropriate magistrate.**(d)***Exception:* This Rule does not apply to subpoenas for witnesses and subpoenas duces tecum issued by attorneys in civil cases as authorized by Virginia Code §§ 8.01-407 and 16.1-89.
Va. Sup. Ct. 7A:12

Rule 7A:10 - Copies of Pleadings and Requests for Subpoenas Duces Tecum to be Furnished All pleadings not otherwise required to be served and requests for subpoenas duces tecum must be served on each counsel of record by delivering, dispatching by commercial delivery service, transmitting by facsimile or mailing a copy to each on or before the day of filing.

At the foot of such pleadings and requests must be appended either acceptance of service or a certificate of counsel that copies were served as this rule requires, showing the date of delivery, dispatching, transmitting or mailing.

Va. Sup. Ct. 7A:10

§ 46.2-301. Driving while license, permit, or privilege to drive suspended or revoked.

A. In addition to any other penalty provided by this section, any motor vehicle administratively impounded or immobilized under the provisions of § 46.2-301.1 may, in the discretion of the court, be impounded or immobilized for an additional period of up to 90 days upon conviction of an offender for driving while his driver's license, learner's permit, or privilege to drive a motor vehicle has been (i) suspended or revoked for a violation of § 18.2-36.1, 18.2-51.4, 18.2-266, 18.2-272, or 46.2-341.24 or a substantially similar ordinance or law in any other jurisdiction or (ii) administratively suspended under the provisions of § 46.2-391.2. However, if, at the time of the violation, the offender was driving a motor vehicle owned by another person, the court shall have no jurisdiction over such motor vehicle but may order the impoundment or immobilization of a motor vehicle owned solely by the offender at the time of arrest. All costs of impoundment or immobilization, including removal or storage expenses, shall be paid by the offender prior to the release of his motor vehicle.

B. Except as provided in § 46.2-304, no resident or nonresident (i) whose driver's license, learner's permit, or privilege to drive a motor vehicle has been suspended or revoked or (ii) who has been directed not to drive by any court or by the Commissioner, or (iii) who has been forbidden, as prescribed by operation of any statute of the Commonwealth or a substantially

similar ordinance of any county, city or town, to operate a motor vehicle in the Commonwealth shall thereafter drive any motor vehicle or any self-propelled machinery or equipment on any highway in the Commonwealth until the period of such suspension or revocation has terminated or the privilege has been reinstated or a restricted license is issued pursuant to subsection E. For the purposes of this section, the phrase "motor vehicle or any self-propelled machinery or equipment" shall not include mopeds.
C. A violation of subsection B is a Class 1 misdemeanor.

D. Upon a violation of subsection B, the court shall suspend the person's license or privilege to drive a motor vehicle for the same period for which it had been previously suspended or revoked. In the event the person violated subsection B by driving during a period of suspension or revocation which was not for a definite period of time, the court shall suspend the person's license, permit or privilege to drive for an additional period not to exceed 90 days, to commence upon the expiration of the previous suspension or revocation or to commence immediately if the previous suspension or revocation has expired.

E. Any person who is otherwise eligible for a restricted license may petition each court that suspended his license pursuant to subsection D for authorization for a restricted license, provided that the period of time for which the license was suspended by the court pursuant to subsection D, if measured from the date of conviction, has expired, even though the suspension itself has not expired. A court may, for good cause shown, authorize the Department of Motor Vehicles to issue a restricted license for any of the purposes set forth in subsection E of § 18.2-271.1. No restricted license shall be issued unless each court that issued a suspension of the person's license pursuant to subsection D authorizes the Department to issue a restricted license. Any restricted license issued pursuant to this subsection shall be in effect until the expiration of any and all suspensions issued pursuant to subsection D, except that it shall automatically terminate upon the expiration, cancellation, suspension, or revocation of the person's license or privilege to drive for any other cause. No restricted license issued pursuant to this subsection shall permit a person to operate a commercial motor vehicle as defined in the Commercial Driver's License Act (§ 46.2-341.1 et seq.). The court shall forward to the Commissioner a copy of its authorization entered pursuant to this subsection, which shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a license is issued as is reasonably necessary to identify the person. The court shall also provide a copy of its authorization to the person, who may not operate a motor vehicle until receipt from the Commissioner of a restricted license. A copy of the restricted license issued by the Commissioner shall be carried at all times while operating a motor vehicle.
F. Any person who operates a motor vehicle or any self-propelled machinery or equipment in violation of the terms of a restricted license issued pursuant to subsection E of § 18.2-271.1 is not guilty of a violation of this section but is guilty of a violation of § 18.2-272.

§ 19.2-306. Revocation of suspension of sentence and probation.

A. Subject to the provisions of § 19.2-306.2, in any case in which the court has suspended the execution or imposition of sentence, the court may revoke the suspension of sentence for any cause the court deems sufficient that occurred at any time within the probation period, or within

the period of suspension fixed by the court. If neither a probation period nor a period of suspension was fixed by the court, then the court may revoke the suspension for any cause the court deems sufficient that occurred within the maximum period for which the defendant might originally have been sentenced to be imprisoned.

B. The court may not conduct a hearing to revoke the suspension of sentence unless the court issues process to notify the accused or to compel his appearance before the court within 90 days of receiving notice of the alleged violation or within one year after the expiration of the period of probation or the period of suspension, whichever is sooner, or, in the case of a failure to pay restitution, within three years after such expiration. If neither a probation period nor a period of suspension was fixed by the court, then the court shall issue process within six months after the expiration of the maximum period for which the defendant might originally have been sentenced to be incarcerated. Such notice and service of process may be waived by the defendant, in which case the court may proceed to determine whether the defendant has violated the conditions of suspension.

C. If the court, after hearing, finds good cause to believe that the defendant has violated the terms of suspension, then the court may revoke the suspension and impose a sentence in accordance with the provisions of § 19.2-306.1. The court may again suspend all or any part of this sentence for a period up to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned, less any time already served, and may place the defendant upon terms and conditions or probation. The court shall measure the period of any suspension of sentence from the date of the entry of the original sentencing order. However, if a court finds that a defendant has absconded from the jurisdiction of the court, the court may extend the period of probation or suspended sentence for a period not to exceed the length of time that such defendant absconded.

D. If any court has, after hearing, found no cause to impose a sentence that might have been originally imposed, or to revoke a suspended sentence or probation, then any further hearing to impose a sentence or revoke a suspended sentence or probation, based solely on the alleged violation for which the hearing was held, shall be barred.

E. Nothing contained herein shall be construed to deprive any person of his right to appeal in the manner provided by law to the circuit court having criminal jurisdiction from a judgment or order revoking any suspended sentence.

§ 19.2-306.1. Limitation on sentence upon revocation of suspension of sentence; exceptions.

A. For the purposes of this section, "technical violation" means a violation based on the probationer's failure to (i) report any arrest, including traffic tickets, within three days to the probation officer; (ii) maintain regular employment or notify the probation officer of any changes in employment; (iii) report within three days of release from incarceration; (iv) permit the probation officer to visit his home and place of employment; (v) follow the instructions of the probation officer, be truthful and cooperative, and report as instructed; (vi) refrain from the use of alcoholic beverages to the extent that it disrupts or interferes with his employment or orderly conduct; (vii) refrain from the use, possession, or distribution of controlled substances or related paraphernalia; (viii) refrain from the use, ownership, possession, or transportation of a firearm; (ix) gain permission to change his residence or remain in the Commonwealth or other designated area without permission of the probation officer; or (x) maintain contact with the probation officer whereby his whereabouts are no longer known to the probation officer. Multiple technical violations arising from a single course of conduct or a single incident or considered at the same revocation hearing shall not be considered separate technical violations for the purposes of sentencing pursuant to this section.

B. If the court finds the basis of a violation of the terms and conditions of a suspended sentence or probation is that the defendant was convicted of a criminal offense that was committed after the date of the suspension, or has violated another condition other than (i) a technical violation or (ii) a good conduct violation that did not result in a criminal conviction, then the court may revoke the suspension and impose or resuspend any or all of that period previously suspended.

C. The court shall not impose a sentence of a term of active incarceration upon a first technical violation of the terms and conditions of a suspended sentence or probation, and there shall be a presumption against imposing a sentence of a term of active incarceration for any second technical violation of the terms and conditions of a suspended sentence or probation. However, if the court finds, by a preponderance of the evidence, that the defendant committed a second technical violation and he cannot be safely diverted from active incarceration through less restrictive means, the court may impose not more than 14 days of active incarceration for a second technical violation. The court may impose whatever sentence might have been originally imposed for a third or subsequent technical violation. For the purposes of this subsection, a first technical violation based on clause (viii) or (x) of subsection A shall be considered a second technical violation, and any subsequent technical violation also based on clause (viii) or (x) of subsection A shall be considered a third or subsequent technical violation.

D. The limitations on sentencing in this section shall not apply to the extent that an additional term of incarceration is necessary to allow a defendant to be evaluated for or to participate in a court-ordered drug, alcohol, or mental health treatment program. In such case, the court shall order the shortest term of incarceration possible to achieve the required evaluation or participation.

VA - HB2013 Probation, revocation, and suspension of sentence; penalty.

Probation, revocation, and suspension of sentence; penalty. Makes changes to the definition of a technical violation as it pertains to the revocation of suspension of sentence and probation. The

bill also provides that upon a first technical violation, if the court originally suspended the imposition of sentence, the court shall revoke such suspension and again suspend all of this sentence and upon a second or subsequent violation, the court may pronounce whatever sentence might have been originally imposed. The bill also specifies that a violation of a term or condition included in the definition of technical violation shall not be considered a special or specific term or condition for sentencing purposes.

The bill also provides that the court may fix the period of probation and the period of suspension for up to the statutory maximum period for which the defendant might originally have been sentenced to be imposed for any felony offense and up to two years for an offense punishable as a Class 1 or Class 2 misdemeanor. Currently, the limitation on periods of probation and periods of suspension is up to the statutory maximum period of imprisonment for any offense.

The bill also adds the offense of crimes against nature committed on or after July 1, 2023, to the list of offenses for which if some period of the sentence for such offense is suspended, the judge is required to order that period of suspension be for the length of time equal to the statutory maximum period for which the defendant might originally have been sentenced to be imprisoned.

On February 6, 2023 in the House:

- Read second time and engrossed

Supplemental Materials

V I R G I N I A :
IN THE GENERAL DISTRICT COURTS OF THE NINETEENTH JUDICIAL DISTRICT

DEFENDANT NAME: CASE NO.(S): _____

_____

Fairfax: ❑ County ❑ City
Town of: ❑ Herndon ❑ Vienna

Charge(s): _____

_____

MOTION FOR EVALUATION OF COMPETENCY AND/OR SANITY AT THE TIME OF THE OFFENSE

COMES NOW the attorney for the above defendant, and files this Motion as indicated below to be heard on _____, 20_____, at 9:30 a.m., or as soon thereafter as possible. The case(s) is/are now scheduled for _____.

Note: Defense Counsel must provide a completed "Request for Forensic Evaluation" form at the time of the motion hearing.

Check One	Code Section	
❑	19.2-169.1	Request a **competency** evaluation in order for court to determine whether the defendant is competent to stand trial.
❑	19.2-169.2	Following a finding pursuant to Code of Virginia §19.2-169.1E that the defendant is incompetent, request that the court order the defendant to receive **treatment to restore competency**.
❑	19.2-169.5	Request evaluation of defendant's **sanity** at time of the offense.

I ASK FOR THIS:

_____
Counsel for Defendant VA State Bar I.D. No.

_____
Print Name Email Address

ORDER

SO ORDERED, the above motion is hereby granted.

❑ Bond is revoked until further hearing.

❑ A review hearing is hereby set for _____.

_____ _____
JUDGE DATE

DISTRIBUTION: Original to Court
Yellow to Commonwealth/City/Town Attorney
Pink to Defense Attorney
Goldenrod to Court Services

IN THE FAIRFAX COUNTY GENERAL DISTRICT COURT

Request for Forensic Evaluation

This form must be completed by the person requesting a forensic evaluation pursuant to §19.2-169.1 or §19.2-169.5.

In addition, upon issuance of the order, the Commonwealth Attorney and defense counsel must forward documents to the assigned evaluator pursuant to §19.2-169.1 or §19.2-169.5 **within 96 hours**. More details are on the reverse.

Defendant: _____ **Case Number:** _____

Defense Attorney: _____

Email Address: _____ **Phone Number:** _____

Commonwealth Atty: _____ **Phone Number:** _____

Interpreter: YES NO Language: _____

❑ **COMPETENCY EVALUATION (§19.2-169.1)**

Facts supporting request: (at least one must be checked)

The defendant…

❑ appears to lack adequate understanding of the judicial system/legal situation.

❑ appears to lack the capacity to assist his/her attorney.

❑ **SANITY EVALUATION (§19.2-169.5)**

Facts supporting request: (at least one must be checked)

The defendant…

❑ has a history of serious mental illness.

❑ was prescribed psychiatric medication(s) at the time of the offense.

As a result of mental illness, it appears that the defendant…

❑ did not know that what he/she was doing was wrong.

❑ did not understand what he/she was doing at the time of the offense.

❑ could not control his/her actions at the time of the offense.\

These facts do NOT support a successful insanity defense:

- The defendant was intoxicated at the time of the offense.
- The defendant has a seizure disorder, but no other psychiatric illness.

If either of the above is true, please explain what other evidence leads you to believe that an insanity defense is viable.

Briefly describe the reason for this request in your own words. You may attach any confidential information in a sealed envelope.

_____

_____

_____

_____

_____

_____

_____

SEE REVERSE

Competency/Sanity Evaluation Procedure

When a Competency and/or Sanity Motion has been granted, the Clerk's Office – Administrative Division will confirm the availability of an independent evaluator and assign the case accordingly so an order can be signed. Once this order is signed, the Clerk's Office will notify counsel of the name and contact information for the assigned doctor. If an email address is provided, a copy of the order will be provided via secure email.

Pursuant to §19.2-169.1 and/or §19.2-169.5, defense counsel and the Commonwealth Attorney must forward certain documents to the evaluator within 96 HOURS of the issuance of the order.

Competency (§19.2-169.1)

The Commonwealth Attorney must provide: (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; (iv) a summary of the reasons for the evaluation request, as well as any other information deemed relevant to the evaluation.

The Defense Attorney must provide: Any available psychiatric records and other information deemed relevant to the evaluation.

Sanity (§19.2-169.5)

The party making the motion must provide: (i) a copy of the warrant or indictment; (ii) the names and addresses of the Commonwealth's Attorney, the defendant's attorney, and the judge ordering the evaluation; (iii) information about the alleged crime, including statements by the defendant made to police and transcripts of preliminary hearings, if any; (iv) a summary of the reasons for the evaluation request; (v) any available psychiatric, psychological, medical or social records that are deemed relevant; and (vi) a copy of defendant's criminal record, to the extent reasonably available.

Once the evaluator receives these documents, they will perform the evaluation. For a Competency Evaluation **only**, they will send a copy of the evaluation to the Court, defense counsel, and the Commonwealth Attorney.

*Please Note - the report and any additional paperwork will be sealed pursuant to 32.1-27, **except** for distribution pursuant to 19.2-169.1 to the Defense Attorney and Commonwealth's Attorney, and to the Community Services Board under 32.1-123 1:03(12).*

Additional Information/Questions

Please direct any questions regarding this procedure to:

Jessi Beach, Supervising Deputy Clerk – Judges' Chambers

Phone Number: 703-246-4374

Email: jessica.beach@fairfaxcounty.gov

Fax: 703-246-6188

SEE REVERSE

ORDER FOR PSYCHOLOGICAL EVALUATION

Case No. .....

Commonwealth of Virginia Va. Code §§ 19.2-168, 19.2-168.1, 19.2-169.1, 19.2-169.5

.....

COURT NAME AND ADDRESS

Commonwealth of Virginia v. .....

TYPE OF EVALUATION AND REPORT

[ ] COMPETENCY EVALUATION: It appearing to the Court, on motion of
[ ] Commonwealth's Attorney [ ] defendant's attorney [ ] the Court
and upon hearing evidence or representations of counsel, that there is probable cause to believe that the defendant lacks substantial capacity to understand the proceedings against him or to assist in his own defense, the Court therefore appoints the evaluator(s) listed below to evaluate the defendant and to submit a report, on or before the date shown below, to this Court, the Commonwealth's Attorney and the defendant's attorney, concerning: (1) the defendant's capacity to understand the proceedings against him; (2) his ability to assist his attorney; and (3) his need for treatment in the event that he is found to be incompetent but restorable, or incompetent for the foreseeable future. If a need for restoration treatment is identified in the event he is found incompetent but restorable, or incompetent for the foreseeable future, the report shall state whether inpatient or outpatient treatment (community-based or jail-based) is recommended. 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. No statements of the defendant relating to the time period of the alleged offense shall be included in the report.

[ ] SANITY AT THE TIME OF THE OFFENSE: It appearing to the Court, upon hearing evidence or representations of counsel for the defendant, that there is probable cause to believe that the defendant's sanity may be a significant factor in his defense and that the defendant is financially unable to pay for expert assistance, the Court therefore appoints the evaluator(s) listed below to evaluate the defendant's sanity at the time of the offense and, where appropriate, to assist in the development of an insanity defense. They shall prepare and submit a full report, on or before the date shown below, solely to the defendant's attorney, concerning the defendant's sanity at the time of the offense, including whether he may have had a significant mental disease or defect which rendered him insane at the time of the offense. If further evaluation on this issue is necessary, the evaluator(s) shall so state.

[ ] The motion for the evaluation having been made by the Commonwealth after receiving notice pursuant to Virginia Code § 19.2-168, the Court also orders the defendant to submit to an evaluation and has advised the defendant that a refusal to cooperate with the Commonwealth's evaluator(s) could result in the exclusion of defendant's expert evidence. The Court further orders the evaluator(s) to submit to the attorneys for the Commonwealth and defendant copies of the report and the records obtained during the evaluation.

DESIGNATION OF EVALUATOR(S)

The Court finds and concludes that:

[ ] the evaluation shall be performed on an outpatient basis at a mental health facility or in jail.

The Court therefore appoints the following evaluator(s) to conduct the evaluation:

[ ] .....

EVALUATOR(S): NAME(S) AND TITLE(S) OR NAME OF FACILITY

[ ] the evaluation shall be conducted on an inpatient basis by qualified staff at a hospital designated by the Commissioner of the Department of Behavioral Health and Developmental Services because:

[ ] an outpatient evaluation (copy attached) has been conducted and the outpatient evaluator opined that a hospital-based evaluation is needed to reliably reach an opinion.

[ ] the defendant is currently in the custody of the Commissioner of Behavioral Health and Developmental Services pursuant to Virginia Code §§ 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.

DUE DATE AND TIME: .....

The Court further orders that the Commonwealth's Attorney and the defendant's attorney forward appropriate background information to the evaluator(s) as required by law.

TO EVALUATORS AND ATTORNEYS: See reverse for additional instructions.

.....
DATE

_____
JUDGE

ADDITIONAL INSTRUCTIONS TO EVALUATOR(S) AND ATTORNEYS

Providing Background Information

1. Competency Evaluation: Prior to an evaluation of competency pursuant to Va. Code § 19.2-169.1, the Commonwealth's Attorney must forward to the evaluator(s) within 96 hours of the issuance of this order:

   a. a copy of the warrant;

   b. the names and addresses of the Commonwealth's Attorney, the defendant's attorney, and the judge ordering the evaluation;

   c. information about the alleged crime; and

   d. a summary of the reasons for the evaluation request.

   The defendant's attorney must provide any available psychiatric records and other information that are deemed relevant within 96 hours of the issuance of this order. Va. Code § 19.2-169.1(C).

2. Sanity at the Time of the Offense: Prior to an evaluation of sanity at the time of the offense, the party making the motion for the evaluation must forward to the evaluator(s):

   a. a copy of the warrant;

   b. the names and addresses of the Commonwealth's Attorney, the defendant's attorney, and the judge ordering the evaluation;

   c. information about the alleged crime, including statements by the defendant made to the police and transcripts of preliminary hearings, if any;

   d. a summary of the reasons for the evaluation request;

   e. any available psychiatric, psychological, medical or social records that are deemed relevant; and

   f. a copy of defendant's criminal record, to the extent reasonably available.

   Va. Code § 19.2-169.5(C).

Use of Information Obtained During Evaluation

No statement of disclosure by the defendant concerning the alleged offense made during the evaluation may be used against the defendant at the trial as evidence, or as a basis for such evidence, except on the issue of his/her mental condition at the time of the offense after the defendant raises the issue pursuant to § 19.2-168 of the Code of Virginia. Va. Code § 19.2-169.7.

SP-237 (Revised 04-18-2018)

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF STATE POLICE

NOTIFICATION OF INVOLUNTARY ADMISSION, MENTAL INCAPACITY, MENTAL INCOMPETENCE, AND TDO WITH VOLUNTARY ADMISSION

THIS FORM SERVES TWO PURPOSES: 1) the top portion notifies the Central Criminal Records Exchange (CCRE) of an adjudication of involuntary admission to inpatient or outpatient mental health treatment, incapacitation, incompetence, or the subject of a temporary detention order who has agreed to voluntary admission and 2) the lower portion (separated by • • •) notifies the CCRE of a restoration of capacity.

Sections 18.2-308.1:2 and 18.2-308.1:3 of the Code of Virginia specify that it shall be unlawful for any person fourteen years of age or older who was involuntarily admitted to a facility or ordered to mandatory outpatient treatment pursuant to §19.2-169.2, involuntarily admitted to a facility or ordered to mandatory outpatient treatment as the result of a commitment hearing pursuant to Article 5 (§37.2-814 *et seq.*) of Chapter 8 of Title 37.2 or pursuant to Article 16 (§16.1-335 et seq.) of Chapter 11 of Title 16.1, or who was the subject of a temporary detention order pursuant to §37.2-809 or §16.1-340.1 and subsequently agreed to voluntary admission pursuant to §37.2-805 or §16.1-338 whose capacity has not been restored pursuant to former §37.1-134.1, former §37.2-1012, or §64.2-2012 or who has obtained court ordered relief under §18.2-308.1:3 to purchase, possess or transport any firearm.

Check Appropriate Block(s):

☐ ACQUITTAL BY REASON OF INSANITY (§19.2-182.2)

☐ ADULT OR MINOR 14 YEARS OF AGE OR OLDER INVOLUNTARILY ADMITTED TO INPATIENT OR OUTPATIENT TREATMENT (§37.2-817, §16.1-345, or §16.1-345.2)

☒ ADJUDICATED MENTALLY INCAPACITATED **OR** INCOMPETENT (Former Subtitle IV, Chapter 10, Article 1 of Title 37.2 (§§37.2-1000 et seq.), Part D, Chapter 20, Article 1, of Title 64.2 (§§64.2-2000 et seq.), 19.2-169.2)

☐ ADULT OR MINOR 14 YEARS OF AGE OR OLDER WHO WAS THE SUBJECT OF A TEMPORARY DETENTION ORDER **AND** AGREED TO VOLUNTARY ADMISSION (37.2-805 or §16.1-338)

DATE OF ADMISSION: ______________ (Date Must Be Entered)

COURT OF JURISDICTION: Fairfax County General District Court

COURT CASE NUMBER: ______________ DATE OF COURT ORDER: ______________

ATTACH COPY OF COURT ORDER

SIGNATURE OF CLERK: ______________ DATE SUBMITTED: ______________

INDIVIDUAL INFORMATION: (Print Clearly)

LAST NAME	FIRST	MIDDLE	(MAIDEN)

SEX	RACE	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES	SOCIAL SECURITY NUMBER

LIST ANY OTHER NAME, SOCIAL SECURITY NUMBER, OR DATE OF BIRTH KNOWN TO HAVE BEEN USED:

LAST NAME	FIRST	MIDDLE	(MAIDEN)	DATE OF BIRTH	SOCIAL SECURITY NUMBER

• •

COMPLETE THIS PORTION OF THE FORM WHEN AN ORDER OF RESTORATION OF CAPACITY OR RIGHT TO PURCHASE, POSSESS, OR TRANSPORT A FIREARM HAS BEEN ENTERED.

NOTIFICATION OF RESTORATION OF CAPACITY OR RIGHT TO PURCHASE, POSSESS, OR TRANSPORT A FIREARM:

Section 18.2- 308.1:1 and §18.2-308.1:3 require the clerk to forward to the Central Criminal Records Exchange a copy of any order issued for restoration of the right to purchase, possess, or transport a firearm by any individual who has obtained court ordered relief under §18.2-308.1:1 or §18.2-308.1:3 to purchase, possess or transport any firearm. Section 64.2-2014 requires the clerk to provide the Central Criminal Records Exchange a copy of any order of restoration of capacity under §64.2-2012.

COURT OF JURISDICTION: ______________ DATE SUBMITTED: ______________

DATE OF COURT ORDER: ______________

COURT CASE NUMBER: ______________

ATTACH COPY OF COURT ORDER

SIGNATURE OF CLERK: ______________

FAX and then **MAIL** THIS FORM TO:
DEPARTMENT OF STATE POLICE
CENTRAL CRIMINAL RECORDS EXCHANGE
P. O. BOX 27472
RICHMOND, VA 23261-7472
FAX: (804) 674-2268

STATE POLICE USE ONLY	
ENTERED	
REMOVED	
OTHER	

Questions concerning the completion of this form may be directed to the Office Manager, Central Criminal Records Exchange, (804) 674-6724.

Distribution: Original – CCRE; First Copy – Retain to Submit Restoration Information; Second Copy – Clerk's Office.

Code of Virginia
Title 19.2. Criminal Procedure
Chapter 11. Proceedings on Question of Insanity

§ 19.2-169.1. (Effective until July 1, 2023) 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) his ability to assist his attorney; and (iii) his need for treatment 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. In cases where a 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 and is incompetent, the report may recommend that the court direct the community services board or behavioral health authority for the jurisdiction in which the defendant is located to (a) conduct an evaluation of the defendant in accordance with subsection B of § 37.2-808 to determine whether the defendant meets the criteria for temporary detention and (b) upon determining that the defendant does meet the criteria for temporary detention, file a petition for issuance of an order for temporary detention of the defendant in accordance with § 37.2-809. 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 approved evaluators described in subsection A.

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

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

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

1982, c. 653; 1983, c. 373; 1985, c. 307; 2003, c. 735;2007, c. 781;2009, cc. 813, 840;2014, cc. 329, 739;2016, c. 445;2018, c. 367;2020, cc. 299, 937, 1121;2021, Sp. Sess. I, c. 316;2022, c. 508.

This section has more than one version with varying effective dates. Scroll down to see all versions.
The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 19.2-169.1. (Effective July 1, 2023) 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) his ability to assist his attorney; and (iii) his need for treatment 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 approved evaluators described in subsection A.

E. The competency determination. — After receiving the report described in subsection D, the

court shall promptly determine whether the defendant is competent to stand trial. A hearing on the defendant's competency is not required unless one is requested by the attorney for the Commonwealth or the attorney for the defendant, or unless the court has reasonable cause to believe the defendant will be hospitalized under § 19.2-169.2. If a hearing is held, the party alleging that the defendant is incompetent shall bear the burden of proving by a preponderance of the evidence the defendant's incompetency. The defendant shall have the right to notice of the hearing, the right to counsel at the hearing and the right to personally participate in and introduce evidence at the hearing.

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

1982, c. 653; 1983, c. 373; 1985, c. 307; 2003, c. 735;2007, c. 781;2009, cc. 813, 840;2014, cc. 329, 739;2016, c. 445;2018, c. 367;2020, cc. 299, 937, 1121;2021, Sp. Sess. I, c. 316.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 19.2. Criminal Procedure
Chapter 11. Proceedings on Question of Insanity

§ 19.2-169.2. (Effective until July 1, 2023) Disposition when defendant found incompetent

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

B. If, at any time after the defendant is ordered to undergo treatment under subsection A, 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 believes the defendant's competency is restored, the director or his designee shall immediately send a report to the court as prescribed in subsection D of § 19.2-169.1. The court shall make a ruling on the defendant's competency according to the procedures specified in subsection E of § 19.2-169.1.

C. Notwithstanding the provisions of subsection A, in cases in which (i) 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;(ii) the defendant has been found to be incompetent pursuant to subsection E or F of § 19.2-169.1;and (iii) the competency report described in subsection D of § 19.2-169.1 recommends that the defendant be temporarily detained pursuant to § 37.2-809, the court may dismiss the charges without prejudice against the defendant and, in lieu of ordering the defendant receive treatment to restore his competency, order the community services board or behavioral health authority serving the jurisdiction in which the defendant is located to (a) conduct an evaluation of the defendant and (b) if the community services board or behavioral health authority determines that the defendant meets the criteria for temporary detention, file a petition for issuance of an order for temporary detention pursuant to § 37.2-809. However, the court shall not dismiss charges and enter an order 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. 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 A.

1982, c. 653; 2003, c. 735;2007, c. 781;2008, cc. 751, 788;2009, cc. 813, 840;2014, cc. 373, 408; 2017, c. 461;2020, c. 937;2022, c. 508.

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§ 19.2-169.2. (Effective July 1, 2023) Disposition when defendant found incompetent

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

B. If, at any time after the defendant is ordered to undergo treatment under subsection A of this section, 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 believes the defendant's competency is restored, the director or his designee shall immediately send a report to the court as prescribed in subsection D of § 19.2-169.1. The court shall make a ruling on the defendant's competency according to the procedures specified in subsection E of § 19.2-169.1.

C. The clerk of 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 A.

1982, c. 653; 2003, c. 735;2007, c. 781;2008, cc. 751, 788;2009, cc. 813, 840;2014, cc. 373, 408; 2017, c. 461;2020, c. 937.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 19.2-169.3. (Effective until October 1, 2022) 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 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, he shall send a report to the court so stating. The report shall also indicate whether, in the board, authority, or inpatient facility director's or his designee's opinion, the defendant should be released, committed 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 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 of § 19.2-169.2.

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

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

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

1982, c. 653; 1999, cc. 946, 985;2003, cc. 915, 919, 989, cls. 4, 5, 1018, cls. 4, 5, 1042, cls. 10, 11; 2006, cc. 863, 914;2007, cc. 781, 876;2008, cc. 406, 796;2009, cc. 813, 840;2012, cc. 668, 800; 2019, c. 797;2021, Sp. Sess. I, cc. 344, 345.

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§ 19.2-169.3. (Effective October 1, 2022) 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 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, he shall send a report to the court so stating. The report shall also indicate whether, in the board, authority, or inpatient facility director's or his designee's opinion, the defendant should be released, committed 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 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 of § 19.2-169.2.

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

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

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

1982, c. 653; 1999, cc. 946, 985;2003, cc. 915, 919, 989, cls. 4, 5, 1018, cls. 4, 5, 1042, cls. 10, 11; 2006, cc. 863, 914;2007, cc. 781, 876;2008, cc. 406, 796;2009, cc. 813, 840;2012, cc. 668, 800;

2019, c. 797;2021, Sp. Sess. I, cc. 344, 345;2022, c. 763.

This section has more than one version with varying effective dates. Scroll down to see all versions.
The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

ORDER FOR TREATMENT OF INCOMPETENT DEFENDANT

Commonwealth of Virginia VA. CODE §§ 19.2-169.2, 19.2-169.3

Case No. .....

.....
COURT NAME AND ADDRESS

Commonwealth of Virginia v. .....

The Court having found, pursuant to Virginia Code § 19.2-169.1(E), that the defendant is incompetent to stand trial, and , based on the attached report or other evidence, that the defendant can be treated to restore his or her competency the Court therefore ORDERS that the defendant be treated in an effort to restore the defendant to competency

[ ] on an outpatient basis in a local correctional facility or at a location determined by the appropriate community services board or behavioral health authority

[ ] specifically, ...
NAME OF OUTPATIENT THERAPIST OR FACILITY

[ ] on an inpatient basis in a hospital, by qualified staff at a hospital to be designated by the Commissioner of Behavioral Health and Developmental Services or his or her designee. Pursuant to Virginia Code § 19.2-169.2, the defendant shall be transferred to and accepted by the hospital designated by the Commissioner as soon as practicable, but no later than 10 days, from the receipt of this Order.

Any psychiatric records and other information that have been deemed relevant and were submitted by the defendant's attorney to the evaluator pursuant to Virginia Code § 19.2-169.1(C) and any reports submitted pursuant to § 19.2-169.1(D) shall be made available to the director of the community services board or behavioral health authority or his designee, or to the director of the treating inpatient facility or his designee, within 96 hours of the issuance of this order.

If, at any time after treatment commences, 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 believes the defendant's competency is restored, the director or his designee shall immediately send a report to the court concerning (1) the defendant's capacity to understand the proceedings against him and (2) the defendant's ability to assist his attorney.

If, at any time after treatment commences, 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, he shall send a report to the court so stating and indicating whether, in the board, authority, or inpatient facility director's or his designee's opinion, the defendant should be (1) released from state custody; (2) committed pursuant to Virginia Code § 37.2-814 et seq.; or (3) certified pursuant to § 37.2-806 in the event he is found to be unrestorably incompetent.

[ ] *Defendant charged with a misdemeanor crime enumerated in Virginia Code § 19.2-169.3(C).* If the defendant has not been restored to competency after forty-five (45) days from the date of commencement of treatment, the director of the community services board or 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 certified pursuant to § 37.2-806.

If the defendant has not been restored to competency by six (6) months from the date of the commencement of treatment, the board, authority, or inpatient facility director or his designee shall send a report to the court so stating and indicating whether, in the director's opinion, the defendant remains restorable to competency or whether the defendant should be (1) released from state custody; (2) committed pursuant to Virginia Code § 37.2-814 et seq.; or (3) certified pursuant to Virginia Code § 37.2-806 in the event he is found to be unrestorably incompetent.

[ ] A review hearing will be held on ..... at .....
DATE TIME

.....
DATE

_____
JUDGE

WARNING TO DEFENDANT: PURSUANT TO § 18.2-308.1:3, YOU SHALL NOT PURCHASE, POSSESS, OR TRANSPORT A FIREARM UNLESS AND UNTIL YOU ARE RELEASED FROM TREATMENT AND OBTAIN A COURT ORDER RESTORING YOUR RIGHT TO DO SO.

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA
v.

GC12345678-00
Case No.

Defendant

ORDER FOR DISPOSITION PERSUANT TO SECTION 19.2-169.3

This case came to be heard by agreement of the Commonwealth and the Defendant pursuant to the above sections of the Code of Virginia, upon the ☒ oral testimony ☐written evaluation of competency to stand trial submitted by Western State Hospital, together with the argument of counsel;

AND IT APPEARING TO THE COURT that the Defendant DEFENDANT was deemed incompetent to stand trial pursuant to 19.2-169.1 competency evaluation and that after undergoing treatment Defendant was not restored to competency, and is likely to remain so for the foreseeable future, it is hereby

ADJUDGED, ORDERED AND DECREED that:

____1. The Defendant shall be remanded to the custody of Western State Hospital, the Superintendent of which is hereby ordered to petition the Staunton General District Court or a Special Justice thereof to involuntarily commit this Defendant pursuant to the provisions of 37.2-814 to 37.2-819 of the Code of Virginia 1950;

AND

____ 2. In accordance with the terms of 19.2-169.3(C), the following misdemeanor charges currently pending against the Defendant, namely **Petit Larceny & Trespass** is/are hereby on the motion of the Commonwealth to ☐Dismissed ☐ Nolle Prossed and any bond associated therewith is/are hereby discharged; and/or

___ 3. In accordance with the terms of 19.2-169.3(D), the following felony charges currently pending against the Defendant, namely **Petit Larceny & Trespass** is/are hereby continued to _____, 20__ at 9:30 a.m. to be ☐Reviewed ☐Dismissed, and any bond previously set in this/these cases is hereby: ☐ Continued ☐ Reduced to $_____ Personal Recognizance;☐and Defendant placed in the Supervised Released Program with the following special conditions:_____

_____

AND IT IS FURTHER STATED THAT THE FINDINGS MADE ABOVE REFER ONLY TO THE CASE(S) DISPOSED OF BY THIS ORDER, AND THAT ANY CHARGES NOT NAMED OR LISTED HEREIN ARE NOT AFFECTED BY THIS ORDER.

ENTERED THIS ____ DAY OF____2023

_____
Judge

Seen and _____

_____
Attorney for the Commonwealth

Seen and _____

_____
Counsel for the Defendant

Rev. 01/01/23

V I R G I N I A :
IN THE GENERAL DISTRICT COURTS OF THE NINETEENTH JUDICIAL DISTRICT

DEFENDANT NAME: CASE NO.(S): _____

_____

Fairfax: ❑ County ❑ City
Town of: ❑ Herndon ❑ Vienna

Charge(s): _____

_____

MOTION FOR EVALUATION OF COMPETENCY AND/OR SANITY AT THE TIME OF THE OFFENSE

COMES NOW the attorney for the above defendant, and files this Motion as indicated below to be heard on _____, 20_____, at 9:30 a.m., or as soon thereafter as possible. The case(s) is/are now scheduled for _____.

Note: Defense Counsel must provide a completed "Request for Forensic Evaluation" form at the time of the motion hearing.

Check One	Code Section	
❑	19.2-169.1	Request a **competency** evaluation in order for court to determine whether the defendant is competent to stand trial.
❑	19.2-169.2	Following a finding pursuant to Code of Virginia §19.2-169.1E that the defendant is incompetent, request that the court order the defendant to receive **treatment to restore competency**.
❑	19.2-169.5	Request evaluation of defendant's **sanity** at time of the offense.

I ASK FOR THIS:

_____
Counsel for Defendant VA State Bar I.D. No.

_____
Print Name Email Address

ORDER

SO ORDERED, the above motion is hereby granted.

❑ Bond is revoked until further hearing.

❑ A review hearing is hereby set for _____.

_____ _____
JUDGE DATE

DISTRIBUTION: Original to Court
Yellow to Commonwealth/City/Town Attorney
Pink to Defense Attorney
Goldenrod to Court Services

IN THE FAIRFAX COUNTY GENERAL DISTRICT COURT

Request for Forensic Evaluation

This form must be completed by the person requesting a forensic evaluation pursuant to §19.2-169.1 or §19.2-169.5.

In addition, upon issuance of the order, the Commonwealth Attorney and defense counsel must forward documents to the assigned evaluator pursuant to §19.2-169.1 or §19.2-169.5 **within 96 hours.** More details are on the reverse.

Defendant: _____ **Case Number:** _____

Defense Attorney: _____

Email Address: _____ **Phone Number:** _____

Commonwealth Atty: _____ **Phone Number:** _____

❑ **COMPETENCY EVALUATION (§19.2-169.1)**

Facts supporting request: (at least one must be checked)

The defendant…

❑ appears to lack adequate understanding of the judicial system/legal situation.

❑ appears to lack the capacity to assist his/her attorney.

❑ **SANITY EVALUATION (§19.2-169.5)**

Facts supporting request: (at least one must be checked)

The defendant…

❑ has a history of serious mental illness.

❑ was prescribed psychiatric medication(s) at the time of the offense.

As a result of mental illness, it appears that the defendant…

❑ did not know that what he/she was doing was wrong.

❑ did not understand what he/she was doing at the time of the offense.

❑ could not control his/her actions at the time of the offense.\

These facts do NOT support a successful insanity defense:

- The defendant was intoxicated at the time of the offense.
- The defendant has a seizure disorder, but no other psychiatric illness.

If either of the above is true, please explain what other evidence leads you to believe that an insanity defense is viable.

Briefly describe the reason for this request in your own words. You may attach any confidential information in a sealed envelope.

_____

_____

_____

_____

_____

_____

_____

SEE REVERSE

Competency/Sanity Evaluation Procedure

When a Competency and/or Sanity Motion has been granted, the Clerk's Office – Administrative Division will confirm the availability of an independent evaluator and assign the case accordingly so an order can be signed. Once this order is signed, the Clerk's Office will notify counsel of the name and contact information for the assigned doctor. If an email address is provided, a copy of the order will be provided via secure email.

Pursuant to §19.2-169.1 and/or §19.2-169.5, defense counsel and the Commonwealth Attorney must forward certain documents to the evaluator within 96 HOURS of the issuance of the order.

Competency (§19.2-169.1)

The Commonwealth Attorney must provide: (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; (iv) a summary of the reasons for the evaluation request, as well as any other information deemed relevant to the evaluation.

The Defense Attorney must provide: Any available psychiatric records and other information deemed relevant to the evaluation.

Sanity (§19.2-169.5)

The party making the motion must provide: (i) a copy of the warrant or indictment; (ii) the names and addresses of the Commonwealth's Attorney, the defendant's attorney, and the judge ordering the evaluation; (iii) information about the alleged crime, including statements by the defendant made to police and transcripts of preliminary hearings, if any; (iv) a summary of the reasons for the evaluation request; (v) any available psychiatric, psychological, medical or social records that are deemed relevant; and (vi) a copy of defendant's criminal record, to the extent reasonably available.

Once the evaluator receives these documents, they will perform the evaluation. For a Competency Evaluation **only**, they will send a copy of the evaluation to the Court, defense counsel, and the Commonwealth Attorney.

Additional Information/Questions

Please direct any questions regarding this procedure to:

Jay Converse, Supervising Deputy Clerk – Judges' Chambers

Phone Number: 703-246-4374

Email: jay.converse@fairfaxcounty.gov

Fax: 703-591-2349

SEE REVERSE

Fairfax County Mental Health Docket
Program Referral

- *To be completed by any person/ agency who has identified a potential participant for the Fairfax Mental Health Docket. Complete as much as is known. Questions: Contact Michelle Cowherd, MH Docket Coordinator: 703-223-2124, Laura.Cowherd@fairfaxcounty.gov*
- SCAN and email referral to Laura.Cowherd@fairfaxcounty.gov

Person making referral: _____ Date: _____
Contact information: _____

Person making referral is a:

- ☐ Family Member
- ☐ Court Services Evaluator
- ☐ Law Enforcement Officer
- ☐ Commonwealth's Attorney
- ☐ Defense Attorney
- ☐ Probation Officer Pre-trial
- ☐ Judge
- ☐ Client (self-referral)
- ☐ Other: _____

Client Name: _____ Phone _____

Social Security #: _____ Date of Birth: _____

Client's Address: _____

Attorney: _____ Phone _____

Mental Health Diagnosis: _____

Substance Use/Abuse Diagnosis (if any): _____

Case #s and Pending Charges:

_____

_____

_____

Race (check only one)

- ☐ White
- ☐ Black or African American
- ☐ Asian
- ☐ American Indian or Alaska Native
- ☐ Pacific Islander or Native Hawaiian
- ☐ Multiracial
- ☐ Unknown
- ☐ Other

Ethnicity (check only one)

- ☐ Hispanic or Latino/a
- ☐ Non-Hispanic or Latino/a
- ☐ Unknown

Gender (check only one)

- ☐ Male
- ☐ Female
- ☐ Unknown

Code of Virginia
Title 19.2. Criminal Procedure
Chapter 9.1. Protective Orders

§ 19.2-152.9. Preliminary protective orders

A. Upon the filing of a petition alleging that (i) the petitioner is or has been, within a reasonable period of time, subjected to an act of violence, force, or threat, or (ii) a petition or warrant has been issued for the arrest of the alleged perpetrator for any criminal offense resulting from the commission of an act of violence, force, or threat, the court may issue a preliminary protective order against the alleged perpetrator in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer. If an ex parte order is issued without an affidavit or a completed form as prescribed by subsection D of § 19.2-152.8 being presented, the court, in its order, shall state the basis upon which the order was entered, including a summary of the allegations made and the court's findings. Immediate and present danger of any act of violence, force, or threat or evidence sufficient to establish probable cause that an act of violence, force, or threat has recently occurred shall constitute good cause.

A preliminary protective order may include any one or more of the following conditions to be imposed on the respondent:

1. Prohibiting acts of violence, force, or threat or criminal offenses that may result in injury to person or property;

2. Prohibiting such other contacts by the respondent with the petitioner or the petitioner's family or household members as the court deems necessary for the health and safety of such persons;

3. Such other conditions as the court deems necessary to prevent (i) acts of violence, force, or threat, (ii) criminal offenses that may result in injury to person or property, or (iii) communication or other contact of any kind by the respondent; and

4. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500.

B. The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court. A copy of a preliminary protective order containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the alleged perpetrator in person as provided in § 16.1-264, and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person

provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the alleged perpetrator in person as provided in § 16.1-264. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. The preliminary order shall specify a date for the full hearing. The hearing shall be held within 15 days of the issuance of the preliminary order, unless the court is closed pursuant to § 16.1-69.35 or 17.1-207 and such closure prevents the hearing from being held within such time period, in which case the hearing shall be held on the next day not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. If such court is closed pursuant to § 16.1-69.35 or 17.1-207, the preliminary protective order shall remain in full force and effect until it is dissolved by such court, until another preliminary protective order is entered, or until a protective order is entered. If the respondent fails to appear at this hearing because the respondent was not personally served, the court may extend the protective order for a period not to exceed six months. The extended protective order shall be served as soon as possible on the respondent. However, upon motion of the respondent and for good cause shown, the court may continue the hearing. The preliminary order shall remain in effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the order and information regarding the date and time of service. The order shall further specify that either party may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court. Upon petitioner's motion to dissolve the preliminary protective order, a dissolution order may be issued ex parte by the court with or without a hearing. If an ex parte hearing is held, it shall be heard by the court as soon as practicable. If a dissolution order is issued ex parte, the court shall serve a copy of such dissolution order on respondent in conformity with §§ 8.01-286.1 and 8.01-296.

Upon receipt of the return of service or other proof of service pursuant to subsection C of § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to primary law-enforcement agency and the agency shall forthwith verify and enter any modification as necessary into the Virginia Criminal Information Network as described above. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.

C. The preliminary order is effective upon personal service on the alleged perpetrator. Except as otherwise provided, a violation of the order shall constitute contempt of court.

D. At a full hearing on the petition, the court may issue a protective order pursuant to § 19.2-152.10 if the court finds that the petitioner has proven the allegation that the petitioner is or has been, within a reasonable period of time, subjected to an act of violence, force, or threat by a preponderance of the evidence.

E. No fees shall be charged for filing or serving petitions pursuant to this section.

F. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

G. As used in this section, "copy" includes a facsimile copy.

H. Upon issuance of a preliminary protective order, the clerk of the court shall make available to the petitioner information that is published by the Department of Criminal Justice Services for victims of domestic violence or for petitioners in protective order cases.

1997, c. 831;1998, cc. 569, 684;1999, c. 371;2001, c. 101;2002, cc. 507, 810, 818;2003, c. 730; 2008, cc. 73, 128, 246;2009, cc. 341, 732;2011, cc. 445, 480;2014, c. 346;2018, c. 652;2019, cc. 197 , 718;2020, c. 137.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 19.2. Criminal Procedure
Chapter 9.1. Protective Orders

§ 19.2-152.10. Protective order

A. The court may issue a protective order pursuant to this chapter to protect the health and safety of the petitioner and family or household members of a petitioner upon (i) the issuance of a petition or warrant for, or a conviction of, any criminal offense resulting from the commission of an act of violence, force, or threat or (ii) a hearing held pursuant to subsection D of § 19.2-152.9. A protective order issued under this section may include any one or more of the following conditions to be imposed on the respondent:

1. Prohibiting acts of violence, force, or threat or criminal offenses that may result in injury to person or property;

2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons;

3. Any other relief necessary to prevent (i) acts of violence, force, or threat, (ii) criminal offenses that may result in injury to person or property, or (iii) communication or other contact of any kind by the respondent; and

4. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500.

B. Except as provided in subsection C, the protective order may be issued for a specified period of time up to a maximum of two years. The protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Prior to the expiration of the protective order, a petitioner may file a written motion requesting a hearing to extend the order. Proceedings to extend a protective order shall be given precedence on the docket of the court. The court may extend the protective order for a period not longer than two years to protect the health and safety of the petitioner or persons who are family or household members of the petitioner at the time the request for an extension is made. The extension of the protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Nothing herein shall limit the number of extensions that may be requested or issued.

C. Upon conviction for an act of violence as defined in § 19.2-297.1 and upon the request of the victim or of the attorney for the Commonwealth on behalf of the victim, the court may issue a protective order to the victim pursuant to this chapter to protect the health and safety of the victim. The protective order may be issued for any reasonable period of time, including up to the lifetime of the defendant, that the court deems necessary to protect the health and safety of the victim. The protective order shall expire at 11:59 p.m. on the last day specified in the protective order, if any. Upon a conviction for violation of a protective order issued pursuant to this subsection, the court that issued the original protective order may extend the protective order as the court deems necessary to protect the health and safety of the victim. The extension of the protective order shall expire at 11:59 p.m. on the last day specified, if any. Nothing herein shall limit the number of extensions that may be issued.

D. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The court, including a circuit court if the circuit court issued the order, shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court and shall forthwith forward the attested copy of the protective order and containing any such identifying information to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. Upon service, the agency making service shall enter the date and time of service and other appropriate information required into the Virginia Criminal Information Network and make due return to the court. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.

E. Except as otherwise provided, a violation of a protective order issued under this section shall constitute contempt of court.

F. The court may assess costs and attorneys' fees against either party regardless of whether an order of protection has been issued as a result of a full hearing.

G. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent with federal law. A person entitled to protection under such a foreign order may file the order in any appropriate district court by filing with the court, an attested or exemplified copy of the order. Upon such a filing, the clerk shall forthwith forward an attested copy of the order to the primary law-enforcement agency responsible for service and entry of protective orders which shall, upon receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network.

Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy

available of any foreign order filed with that court. A law-enforcement officer may, in the performance of his duties, rely upon a copy of a foreign protective order or other suitable evidence which has been provided to him by any source and may also rely upon the statement of any person protected by the order that the order remains in effect.

H. Either party may at any time file a written motion with the court requesting a hearing to dissolve or modify the order. Proceedings to modify or dissolve a protective order shall be given precedence on the docket of the court. Upon petitioner's motion to dissolve the protective order, a dissolution order may be issued ex parte by the court with or without a hearing. If an ex parte hearing is held, it shall be heard by the court as soon as practicable. If a dissolution order is issued ex parte, the court shall serve a copy of such dissolution order on respondent in conformity with §§ 8.01-286.1 and 8.01-296.

I. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

J. No fees shall be charged for filing or serving petitions pursuant to this section.

K. As used in this section:

"Copy" includes a facsimile copy; and

"Protective order" includes an initial, modified or extended protective order.

L. Upon issuance of a protective order, the clerk of the court shall make available to the petitioner information that is published by the Department of Criminal Justice Services for victims of domestic violence or for petitioners in protective order cases.

M. An appeal of a protective order issued pursuant to this section shall be given expedited review by the Court of Appeals.

1997, c. 831;1998, cc. 569, 684;1999, c. 371;2002, cc. 507, 810, 818;2003, c. 730;2008, cc. 73, 246; 2009, cc. 341, 732;2010, cc. 425, 468;2011, cc. 445, 480;2012, cc. 152, 261;2014, c. 346;2018, c. 652;2020, cc. 137, 1005;2021, Sp. Sess. I, c. 489.

This section has more than one version with varying effective dates. Scroll down to see all versions.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

EMERGENCY PROTECTIVE ORDER
Commonwealth of Virginia Va. Code § 19.2-152.8

Court Case No. .....

[ ] General District Court [ ] Circuit Court
..... [ ] Juvenile and Domestic Relations District Court

ALLEGED VICTIM

LAST FIRST MIDDLE

DATE OF BIRTH OF ALLEGED VICTIM

V.

RESPONDENT

LAST FIRST MIDDLE

.....
RESPONDENT'S ADDRESS/LOCATION

.....

[ ] CAUTION: Weapon Involved

RESPONDENT IDENTIFIERS (IF KNOWN)

RACE	SEX	BORN MO.	BORN DAY	BORN YR.	HT. FT.	HT. IN.	WGT.	EYES	HAIR

SSN

DRIVER'S LICENSE NO.	STATE	EXP.

REQUEST FOR EMERGENCY PROTECTIVE ORDER

To the individual requesting the order: Please provide information on alleged victim and other requested protected persons on form DC-621, NON-DISCLOSURE ADDENDUM.

I, the undersigned, assert under oath that the alleged victim is being or has been subjected to an act of violence, force, or threat, specifically:

.....

Therefore, I respectfully request the [ ] issuance [ ] extension of an emergency protective order. In the case of a request for extension, I certify that the person in need of protection is physically or mentally incapable of filing a petition pursuant to Virginia Code § 19.2-152.9 or 19.2-152.10.

..... _____ .....
NAME AND AGENCY/RELATIONSHIP TO VICTIM (If law enforcement officer, include badge and code no.) [ ] ALLEGED VICTIM/PARENT/PERSON IN *LOCO PARENTIS* [ ] LAW ENFORCEMENT OFFICER DATE

Subscribed and sworn to before me this day [ ] in person [ ] by electronic communication

(If oath taken by electronic communication, print or type name of judge or magistrate taking oath.) .....
DATE

_____
[ ] JUDGE [ ] MAGISTRATE

EMERGENCY PROTECTIVE ORDER

Based on the above assertion and other evidence, I find that (if checked below):

[ ] There is probable danger of a further act of violence, force, or threat being committed by the Respondent against ..... the alleged victim; **OR**

[ ] A [ ] warrant [ ] petition has been issued charging the Respondent with a criminal offense resulting from the commission of an act of violence, force, or threat as defined in Va. Code § 19.2-152.7:1.

It is ORDERED that the request is hereby [ ] denied [ ] granted and ORDERED that the Respondent shall observe the following conditions:

[ ] The Respondent shall not commit acts of violence, force, or threat or criminal offenses resulting in injury to person or property.

[ ] In order to protect the safety of the alleged victim or the alleged victim's family or household members, the Respondent shall have no contact of any kind

.....

[ ] except as follows: .....

[ ] The Respondent is also prohibited from being in the physical presence of

.....

[ ] The alleged victim is granted possession of the companion animal described as ..... (NAME/TYPE)

[ ] It is further ordered that .....

[ ] Supplemental Sheet to Protective Order, Form DC-653, attached and incorporated by reference. Number of supplemental pages .....

This Order is issued on .....
DATE

THIS ORDER EXPIRES ON ..... **at 11:59 p.m.**
DATE

RESPONDENT: SEE WARNINGS ON REVERSE

(Print or type name of judge or magistrate if oral order is reduced to writing by the law enforcement officer.)

_____
[ ] JUDGE [ ] MAGISTRATE

VERIFICATION: I have verified this order. .....
DATE

_____
[ ] JUDGE [ ] MAGISTRATE

COURT

RETURNS: Each person was served according to law, as indicated below, unless not found.

RESPONDENT

NAME .....

.....

ADDRESS .....

.....

[ ] PERSONAL SERVICE

TELEPHONE NUMBER: .....

[ ] NOT FOUND

SERVING OFFICER

for _____

DATE AND TIME

Respondent's Description (for VCIN entry):

RACE ..... SEX .....

DOB: .....

HGT ..... WGT .....

EYES ..... HAIR .....

SSN .....

Relationship to Petitioner/Plaintiff .....

Distinguishing features .....

ALLEGED VICTIM: (See form DC-621, NON-DISCLOSURE ADDENDUM)

NAME .....

[ ] PERSONAL SERVICE

[ ] NOT FOUND

SERVING OFFICER

for _____

DATE AND TIME

[ ] Copy delivered to

.....

.....

.....

By .....

TITLE

.....

SIGNATURE

.....

DATE

This order will be entered into the Virginia Criminal Information Network. The Respondent may at any time file a motion with the court requesting a hearing to dissolve or modify this order; however, this order remains in full force and effect unless and until dissolved or modified by the court.

WARNINGS TO RESPONDENT:

PURSUANT TO § 18.2-308.1:4, YOU SHALL NOT PURCHASE OR TRANSPORT ANY FIREARM WHILE THIS ORDER IS IN EFFECT. IF YOU HAVE A CONCEALED HANDGUN PERMIT, YOU MUST IMMEDIATELY SURRENDER THAT PERMIT TO THE COURT ISSUING THIS ORDER.

IF YOU VIOLATE THE CONDITIONS OF THIS ORDER, YOU MAY BE SENTENCED TO JAIL AND/OR ORDERED TO PAY A FINE.

DEFINITION OF TERMS USED IN THIS ORDER

"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, or (v) any individual who has a child in common with the defendant, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous twelve (12) months, cohabitated with the person, and any children of either of them residing in the same home with the person.

A **"law-enforcement officer"** means any full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

"Act of violence, force, or threat" means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et. seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

"Physical presence" includes (i) intentionally maintaining direct visual contact with the petitioner or (ii) unreasonably being within 100 feet from the petitioner's residence or place of employment.

PRELIMINARY PROTECTIVE ORDER

Commonwealth of Virginia VA. CODE § 19.2-152.9

Case No. .....

Hearing Date and Time: .....

[ ] General District Court [ ] Circuit Court [ ] Extension of Preliminary Protective Order

..... [ ] Juvenile and Domestic Relations District Court

PETITIONER

LAST FIRST MIDDLE

PETITIONER'S DATE OF BIRTH

And on behalf of minor family or household members:
(list each name and date of birth)

.....

.....

.....

Other protected family or household members:
(list each name and date of birth)

.....

.....

.....

V.

RESPONDENT

LAST FIRST MIDDLE

.....
RESPONDENT'S ADDRESS

.....

RESPONDENT IDENTIFIERS (IF KNOWN)

RACE	SEX	BORN MO.	BORN DAY	BORN YR.	HT. FT.	HT. IN.	WGT.	EYES	HAIR

SSN

DRIVER'S LICENSE NO.	STATE	EXP.

[ ] CAUTION: Weapon Involved

Distinguishing features: .....

SUMMONS FOR HEARING

TO ANY AUTHORIZED OFFICER: Summon the Respondent as provided below:

TO THE RESPONDENT: You are commanded to appear before this Court on .....
DATE AND TIME

at ..... for a hearing on this Petition.
NAME AND ADDRESS OF COURT

.....
DATE ISSUED

_____
[ ] CLERK [ ] DEPUTY CLERK

THE COURT FINDS that it has jurisdiction over the parties and subject matter, and that

1. [ ] The Petitioner is, or has been, within a reasonable period of time, subjected to an act of violence, force or threat, **OR**
   [ ] A warrant or petition has been issued charging the Respondent with a criminal offense resulting from the commission of an act of violence, force, or threat as defined in Va. Code § 19.2-152.7:1; and
2. In order to protect the health and safety of the Petitioner or any family or household member of the Petitioner, a preliminary protective order is warranted.

[ ] *Ex Parte* Proceeding Only: The petition has been supported by an affidavit or sworn testimony before the judge or intake officer, and either the Petitioner is in immediate and present danger of any act of violence, force, or threat or there is sufficient evidence to establish probable cause that an act of violence, force, or threat has recently occurred so as to justify an *ex parte* proceeding.

[ ] As this order was entered without a separate affidavit or an attested petition, or without a form pursuant to Va. Code § 16.1-253.4(D) being presented, the basis upon which this order is entered, including a summary of the allegations made and the court's findings, is as follows:

.....

THE COURT ORDERS that:

[ ] The Respondent shall not commit acts of violence, force, or threat or criminal offenses that may result in injury to person or property.

[ ] The Respondent shall have no contact of any kind with the Petitioner

[ ] except as follows: .....

[ ] The Respondent shall have no contact of any kind with the family or household members of the Petitioner named above

[ ] except as follows: .....

[ ] The Petitioner is granted possession of the companion animal described as .....
NAME/TYPE

[ ] It is further ordered that

.....

Case No. .....

It is further ORDERED that a full hearing on the petition for a protective order be held at this Court on ..... at .....* and that service of this Order will constitute notice to the parties for that hearing.

*** If the court is closed on the above date because the conditions constitute a threat to the health or safety of the general public or for another reason set forth in Va. Code § 16.1-69.35 or § 17.1-207, the full hearing will be held on the next day that the court is open, and this Preliminary Protective Order will remain in full force and effect until this order is dissolved by the court, another preliminary protective order is entered or a protective order is entered.**

[ ] It is ORDERED that the Preliminary Protective Order is extended

- [ ] as the Respondent failed to appear at the protective order hearing set for ..... because the Respondent was not personally served.
- [ ] upon motion of the Respondent and for good cause shown.

[ ] Supplemental Sheet to Protective Order, Form DC-653, attached and incorporated by reference. No. of supplemental sheets .....

..... _____

DATE JUDGE

WARNINGS TO RESPONDENT:

Pursuant to Code of Virginia § 18.2-308.1:4, Respondent shall not purchase or transport any firearm while this order is in effect. If Respondent has a concealed handgun permit, Respondent must immediately surrender that permit to the court issuing this order. If Respondent violates the conditions of this order, Respondent may be sentenced to jail and/or ordered to pay a fine.

This order will be entered into the Virginia Criminal Information Network. Either party may at any time file a motion with the court requesting a hearing to dissolve or modify this order; however, this order remains in full force and effect unless and until dissolved or modified by the court. **Only the court can change this order.**

Case No. .....

RETURNS: Each person was served according to law, as indicated below, unless not found.

RESPONDENT:

NAME .....

.....

ADDRESS .....

.....

[ ] PERSONAL SERVICE

TELEPHONE NUMBER .....

[ ] NOT FOUND

_____
SERVING OFFICER

for _____

.....
DATE AND TIME

RESPONDENT'S DESCRIPTION (for VCIN entry):

RACE ..... SEX .....

DOB: .....

HGT ..... WGT .....

EYES ..... HAIR .....

SSN .....

Relationship to Petitioner/Plaintiff .....

Distinguishing features .....

.....

PETITIONER: (See form DC-621, NON-DISCLOSURE ADDENDUM)

NAME .....

.....

[ ] PERSONAL SERVICE

[ ] NOT FOUND

_____
SERVING OFFICER

for _____

.....
DATE AND TIME

[ ] Copy delivered to

.....

.....

by .....
TITLE

.....
SIGNATURE

.....

DEFINITIONS:

"Act of violence, force, or threat" means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et. seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, or (v) any individual who has a child in common with the defendant, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous twelve (12) months, cohabitated with the person, and any children of either of them residing in the same home with the person.

PROTECTIVE ORDER
Commonwealth of Virginia VA. CODE § 19.2-152.10

Case No. .....

[ ] General District Court [ ] Circuit Court
..... [ ] Juvenile and Domestic Relations District Court

[ ] Amended Protective Order [ ] Extension of Protective Order [ ] Conviction for Violation of Protective Order

PETITIONER

LAST FIRST MIDDLE

PETITIONER'S DATE OF BIRTH

And on behalf of minor family or household member(s):
(list each name and date of birth)

.....

.....

.....

Other protected family or household members:
(list each name and date of birth)

.....

.....

.....

V.

RESPONDENT

LAST FIRST MIDDLE

.....
RESPONDENT'S ADDRESS

.....

RESPONDENT IDENTIFIERS (IF KNOWN)

RACE	SEX	BORN MO.	BORN DAY	BORN YR.	HT. FT.	HT. IN.	WGT.	EYES	HAIR

SSN

DRIVER'S LICENSE NO.	STATE	EXP.

[ ] CAUTION: Weapon Involved

Distinguishing features: .....

THE COURT FINDS that it has jurisdiction over the parties and subject matter, that the Respondent was given reasonable notice and an opportunity to be heard, and that

[ ] A warrant or petition has been issued charging the Respondent with a criminal offense resulting from the commission of an act of violence, force, or threat as defined in Va. Code § 19.2-152.7:1, **OR**

[ ] The Respondent has been convicted of
  [ ] a criminal offense resulting from the commission of an act of violence, force, or threat as defined in Va. Code § 19.2-152.7:1.
  [ ] a violation of a protective order pursuant to Va. Code § 18.2-60.4, **OR**

[ ] A full hearing on the petition for a protective order has been held pursuant to Va. Code § 19.2-152.9(D), **OR**

[ ] A hearing has been held pursuant to Va. Code § 19.2-152.10(B) on a motion to extend a protective order.

THE COURT FURTHER FINDS that the Petitioner and the Respondent

  [ ] cohabited more than 12 months ago but not within the past 12 months [ ] have never cohabited.

Accordingly, to protect the health and safety of the Petitioner and family or household members of the Petitioner, **THE COURT ORDERS** that:

[ ] The Respondent shall not commit acts of violence, force, or threat or criminal offenses that may result in injury to person or property.

[ ] The Respondent shall have no contact of any kind with the Petitioner
  [ ] except as follows: .....

[ ] The Respondent shall have no contact of any kind with the family or household members of the Petitioner named above
  [ ] except as follows:

.....

[ ] The Petitioner is granted possession of the companion animal described as .....
NAME/TYPE

Case No. .....

[ ] It is further ordered that

.....

[ ] Supplemental Sheet to Protective Order, Form DC-653, attached and incorporated by reference. Number of supplemental pages: .....

[X] The Respondent shall surrender, sell or transfer any firearm possessed by Respondent, within 24 hours after being served with this order, as follows:

(a) surrender any such firearm to a designated local law-enforcement agency;

(b) sell or transfer any such firearm to a dealer as defined in § 18.2-308.2; or

(c) sell or transfer any such firearm to any person who is not prohibited by law from possessing a firearm.

[X] The Respondent shall, within 48 hours after being served with this order:

(a) complete the attached certification form stating either that the Respondent does not possess any firearms or that all firearms possessed by the Respondent have been surrendered, sold or transferred; and

(b) file the completed certification form with the clerk of the court that entered this order.

[ ] Final judgment having been rendered on appeal from the juvenile and domestic relations district court, this matter is remanded to the jurisdiction of the juvenile and domestic relations district court in accordance with Virginia Code § 16.1-297.

THIS ORDER SHALL REMAIN IN FULL FORCE AND EFFECT UNTIL ..... **at 11:59 p.m.**
MONTH DAY YEAR

..... _____
DATE JUDGE

WARNINGS TO RESPONDENT:

If Respondent violates the conditions of this order, Respondent may be sentenced to jail and/or ordered to pay a fine. This order will be entered into the Virginia Criminal Information Network. Either party may at any time file a motion with the court requesting a hearing to dissolve or modify this order; however, this Order remains in full force and effect unless and until dissolved or modified by the court. **Only the court can change this Order.**

Federal Offenses: Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. § 2262). Federal law provides penalties for possessing, transporting, shipping or receiving any firearm or ammunition while subject to a qualifying protective order and under the circumstances specified in 18 U.S.C. § 922(g)(8).

Full Faith and Credit: This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, and any U.S. Territory, and may be enforced on Tribal Lands (18 U.S.C. § 2265).

VIRGINIA FIREARMS PROHIBITIONS:

Pursuant to Code of Virginia § 18.2-308.1:4, Respondent shall not purchase, transport or possess any firearm while this order is in effect. For a period of 24 hours after being served with this order, Respondent may, however, continue to possess and transport a firearm possessed by Respondent at the time of service for the purposes of surrendering the firearm to a law-enforcement agency, or selling or transferring that firearm to a dealer as defined in § 18.2-308.2:2 or to any person who is not prohibited by law from possessing that firearm.

If Respondent has a concealed handgun permit, Respondent must immediately surrender that permit to the court issuing this order.

Case No. .....

RETURNS: Each person was served according to law, as indicated below, unless not found.

RESPONDENT:	**PETITIONER:** (See form DC-621, NON-DISCLOSURE ADDENDUM)
NAME .... ADDRESS .... [ ] PERSONAL SERVICE TELEPHONE NUMBER ..... [ ] NOT FOUND _____ SERVING OFFICER for _____ ..... DATE AND TIME	NAME .... [ ] PERSONAL SERVICE [ ] NOT FOUND _____ SERVING OFFICER for _____ ..... DATE AND TIME
RESPONDENT'S DESCRIPTION (for VCIN entry): RACE ..... SEX ..... DOB: ..... HGT ..... WGT ..... EYES ..... HAIR ..... SSN ..... Tel. No. ..... Relationship to Petitioner/Plaintiff ..... Distinguishing features	[ ] Copy delivered to: .... by ..... TITLE ..... SIGNATURE .....

DEFINITIONS:

"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, or (v) any individual who has a child in common with the defendant, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous twelve (12) months, cohabitated with the person, and any children of either of them residing in the same home with the person.

"Act of violence, force, or threat" means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et. seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

PROTECTIVE ORDER
FIRAEARM CERTIFICATION
Commonwealth of Virginia Va. Code § 18.2-308.1:4

Case No. .....

[ ] General District Court [ ] Circuit Court
..... [ ] Juvenile and Domestic Relations District Court

.....
ADDRESS OF COURT

..... v. .....
PETITIONER RESPONDENT

I, the named Respondent, certify pursuant to Virginia Code § 18.2-308.1:4 that

[ ] I do not possess any firearms.

OR

[ ] I have surrendered, sold or transferred all firearms that were possessed by me, as required by the issued Protective Order.

I understand that I am required to file this completed certification form with the clerk of the court that entered the Protective Order within 48 hours after being served with the Protective Order.

I further understand that I am required to surrender my concealed firearm permit, if any, to the court named above that entered the Protective Order.

.....
DATE

_____
SIGNATURE OF RESPONDENT

.....
PRINTED NAME OF RESPONDENT

VIRGINIA FIREARMS PROHIBITION:

Pursuant to Virginia Code § 18.2-308.1:4, Respondent shall not purchase, transport or possess any firearm while the Protective Order is in effect.

(FOR COURT USE ONLY)

[ ] As the Respondent failed to file the required certification form with the clerk of the court, a show cause summons for contempt of court shall be issued and served on the Respondent.

.....
DATE

_____
JUDGE

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 18th day of January, 2023.

Present: Goodwyn, C.J., Powell and Kelsey, JJ.

In Re: Pam Bonner, et al., Petitioners

Record No. 220628

Upon a Petition for a Writ of Prohibition

Pam Bonner and George Anthony (collectively, "petitioners") petition for a writ of prohibition to prevent the Richmond General District Court ("Richmond GDC")* from taking further action on 196 unlawful detainer proceedings brought against the petitioners and "similarly situated tenants" because their landlord, AP Aden Park LLC t/a James River Pointe ("Aden Park"), allegedly violated a notice requirement found in the federal Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). Pub. L. N. 116-136, 134 Stat. 281 (2020). The petitioners also request that the Richmond GDC be prohibited from (1) acting on any other unlawful detainer actions filed in violation of the notice requirement and (2) issuing any summons for unlawful detainer based on unpaid rent unless the plaintiff avows compliance with the requirement. Further, the petitioners move for a rule directing the respondents to show cause why they should not be held in contempt for disobeying our November 7, 2022, order staying the petitioners' unlawful detainer proceedings pending the disposition of this petition ("stay order"). For the following reasons, we dismiss the petition, deny the motion for a rule to show cause, and vacate the stay order.

* As respondents, the petitioners name the Chief Judge and the Clerk of the Richmond GDC (collectively, "respondents").

I. BACKGROUND

On September 7, 2022, Aden Park sent each petitioner a "5-Day Notice for Failure to Pay Rent & 30-Day Notice to Vacate." In relevant part, the notices informed the petitioners that they owed Aden Park unpaid rent and other balances, Aden Park would terminate their rental agreements if their debts were not satisfied within five days and might file unlawful detainer actions against them, and they would be evicted within 30 or more days of the notice if their rental agreements were terminated. On September 12, Aden Park filed unlawful detainer actions against the petitioners in the Richmond GDC and filed 194 unlawful detainer actions against other tenants between September 12 and September 16. According to the petitioners, Aden Park initiated those actions less than 30 days after it provided the "194 defendants" with the same notice to vacate the petitioners received. On October 7, 2022, the Richmond GDC awarded Aden Park judgments for possession and money damages against the petitioners. The petitioners did not appeal to the circuit court, and the Richmond GDC issued writs of eviction against them on November 3 and 4, 2022.

In response to the stay order issued by this Court, the Richmond GDC issued orders on November 15 recalling the petitioners' writs of eviction ("recall orders"). The orders were delivered to the Richmond City Sheriff's Office the same day, and they commanded the sheriff to return the writs of eviction without further attempting to serve them. Nevertheless, Bonner claims that, on November 18, there was a notice on the front door of her apartment informing her that she would be evicted on November 29. By November 28, Bonner had moved herself and her three children to a hotel. Bonner returned to her apartment two days later and, due to damage that had occurred in her absence, she regarded the premises as no longer habitable. A maintenance supervisor told Bonner he had been notified her eviction was cancelled.

II. PETITION FOR A WRIT OF PROHIBITION

Based on the forgoing events, the petitioners argue the Richmond GDC lacks subject matter jurisdiction over the unlawful detainer actions Aden Park filed against them and other tenants. The petitioners explain that Aden Park is subject to the CARES Act's direction that a landlord "may not require [a] tenant to vacate [a] covered dwelling unit before the date that is 30 days after the date on which the [landlord] provides the tenant with a notice to vacate" ("30-day notice requirement"). 15 U.S.C. § 9058(c)(1). The petitioners read this 30-day notice requirement to mandate that a landlord seeking to evict a tenant for nonpayment of rent must give the tenant notice to vacate the premises within 30 days then wait for that 30-day period to expire before initiating unlawful detainer proceedings. The petitioners assert that the 30-day notice requirement preempts Code § 55.1-1245(F) to the extent it allows a landlord to terminate a rental agreement for non-payment of rent and proceed with an unlawful detainer action after only five days' notice.

Turning to Virginia law, the petitioners explain that Code §§ 16.1-77(3) and 8.01-126 give general district courts subject matter jurisdiction to adjudicate unlawful detainer actions. However, the petitioners contend, that jurisdiction does not "arise" under Code § 8.01-126(B) until "possession of any house, land or tenement is unlawfully detained by the person in possession thereof." Code § 8.01-126(B). Relying on Code §§ 55.1-1245(F) and -1251, the petitioners argue that this jurisdictionally necessary unlawful possession does not occur until the landlord provides the tenant with notice to vacate *and* waits for "the time period stated in the notice" to expire. In other words, the petitioners suggest that a tenant lawfully occupies the leased premises and a general district court cannot take jurisdiction of an unlawful detainer action against the tenant until the notice "precondition" is satisfied. Accordingly, the petitioners

assert, a general district court cannot adjudicate an unlawful detainer action pertaining to a CARES Act-covered property until more than 30 days after the tenant receives notice of the landlord's intent to terminate the operative rental agreement. The petitioners conclude a writ of prohibition should issue as prayed because the Richmond GDC lacks subject matter jurisdiction over unlawful detainer actions that contravene the 30-day notice "precondition," including all of Aden Park's.

We disagree. First, the petitioners cannot challenge unlawful detainer proceedings other than their own because they lack the requisite standing to do so. *See Howell v. McCauliffe*, 292 Va. 320, 330 (2016); *see also Casey v. Merck & Co.*, 283 Va. 411, 418 (2012); *W.S. Carnes, Inc. v. Board of Sup'rs*, 252 Va. 377, 383 (1996). Further, the petitioners have not identified a defect in the Richmond GDC's subject matter jurisdiction over their proceedings. Prohibition is an extraordinary writ that "may not be used for the correction of errors." *See Elliott v. Great Atl. Mgmt. Co., Inc.*, 236 Va. 334, 338 (1988). "If a subordinate court has jurisdiction of the subject matter of the controversy, jurisdiction of the parties, and the amount in dispute is within the monetary limits of the court's power, a mistaken exercise of that jurisdiction does not justify resort to the remedy of prohibition." *Id.* Stated more succinctly, "[i]f the court . . . has jurisdiction to enter any order in the proceeding . . ., the writ does not lie." *Id.*

Subject matter jurisdiction is "the power to adjudicate a case upon the merits and dispose of it as justice may require." *Oxenham v. J.S.M.*, 256 Va. 180, 184 (1998) (internal quotation marks omitted). Such jurisdiction "can only be acquired by virtue of the Constitution or of some statute, and it refers to a court's power to adjudicate a class of cases or controversies." *Cilwa v. Commonwealth*, 298 Va. 259, 266 (2019) (internal quotation marks and citation omitted). "Viewed correctly, subject matter jurisdiction focuses on the *subject* of the case not the particular

proceeding that may be one part of the case." *Id.* at 267 (internal alteration and quotation marks omitted).

As the petitioners acknowledge, Code § 16.1-77(3) gives general district courts subject matter jurisdiction over actions of unlawful detainer as provided in Code § 8.01-124 et seq. Contrary to the petitioners' contention, we discern no limitation on that jurisdiction in the interplay of statutes found in other Titles of the Code that prescribe how and when a landlord may initiate an unlawful detainer action. *See Cilwa*, 298 Va. at 269-70; *Virginia Elec. & Power Co. v. Hylton*, 292 Va. 92 (2016); *Morrison v. Bestler*, 239 Va. 166, 168-69, 172-73 (1990); *see also Rickman v. Commonwealth*, 294 Va. 531, 538 n.2 (2017). The petitioners also misread *Parrish v. Fed. Nat'l Mortg.*, 292 Va. 44 (2016), and *Johnson v. Goldberg*, 207 Va. 487, 490 (1966), as holding that adequate notice of a lessor's intent to terminate a lease for non-payment of rent or the lessor's right to possess the subject premises are prerequisites to a court's subject matter jurisdiction over an unlawful detainer action, and we have found no other authority supporting the petitioners' arguments. Accordingly, because Aden Park's purported violation of the 30-day notice requirement does not implicate the Richmond GDC's subject matter jurisdiction, the petitioners have not demonstrated their entitlement to prohibition.

III. MOTION FOR A RULE TO SHOW CAUSE

Further, we deny the petitioners' request that the respondents be directed to show cause why they should not be held in contempt for violating the stay order. The petitioners fail to describe circumstances suggesting that either respondent willfully or recklessly violated the order. *See Singleton v. Commonwealth*, 278 Va. 542, 549 (2009); *Abdo v. Commonwealth*, 64 Va. App. 468, 477 (2015). Nor have the petitioners identified an instance in which the respondents conceivably disobeyed the order's express commands. *See Petrosinelli v. People for*

Ethical Treatment of Animals, Inc., 273 Va. 700, 706-07 (2007); *DRHI, Inc. v. Hanback*, 288 Va. 249, 255 (2014); *Leisge v. Leisge*, 224 Va. 303, 309 (1982). Accordingly, we see no reason to require the respondents to further defend their actions.

For these reasons, we dismiss the petition, deny the motion for a rule to show cause, and vacate our November 7, 2022 order staying the Richmond GDC's unlawful detainer proceedings against the petitioners.

A Copy,

Teste:

Clerk

IN THE
SUPREME COURT OF VIRGINIA

Record No. 220628

IN RE PAM BONNER AND GEORGE ANTHONY

RESPONSE TO AMENDED VERIFIED PETITION FOR WRIT OF PROHIBITION

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October 28, 2022

Counsel for Respondents

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MOTION TO DISMISS

Pursuant to Rule 5:7(b)(6), Respondents Hon. David M. Hicks, Chief Judge of the Richmond City General District Court, and Cecelia V. Garner, Clerk of the Richmond City General District Court, move to dismiss the Amended Petition for Writ of Prohibition because prohibition is not an available remedy and Petitioners fail to state facts upon which relief should be granted.

BRIEF IN SUPPORT OF MOTION TO DISMISS

INTRODUCTION

A writ of prohibition is plainly unwarranted here. The general district court was acting within the scope of its jurisdiction in ruling on Petitioners' unlawful detainer actions. *Elliott v. Great Atl. Mgmt. Co.*, 236 Va. 334, 338 (1988). Petitioners' argument that the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) preempts the Virginia statute governing pre-filing notice would, at most, demonstrate an error in the judgment that must be raised on appeal—not in an extraordinary writ. *Barrett v. Minor*, 299 Va. 27, 31 (2020). Petitioners also improperly attempt to raise the rights of third parties, asking this Court to restrain the general district court from "acting on any other unlawful

detainer actions" involving "similarly situated tenants," and to impose affidavit requirements on such actions. Am. Pet. at 9–10; Am. Mem. L. at 26. But a writ of prohibition is neither a class-action procedure nor a rulemaking proceeding. Petitions cannot seek relief on behalf of others, nor can they ask this Court to create a statewide procedural rule governing unlawful detainer actions. This Court should dismiss Petitioners' improper invocation of its original jurisdiction.

Because prohibition is not an appropriate remedy here, this Court need not consider the merits of Petitioners' preemption argument. But even if this Court were to consider the merits, Petitioners' claim is contrary to the plain text of the CARES Act. At most, the CARES Act requires that a landlord must provide thirty days' notice before it may "require the tenant to vacate." 15 U.S.C. § 9058(c)(1). The CARES Act does not state that thirty days' notice is required before a legal action may be filed. It therefore does not preempt Virginia law, which requires five days' notice before an unlawful detainer action may be filed. Code §§ 55.1-1245, 55.1-1251. By Petitioners' own allegations, their landlord provided five days' notice before filing the unlawful detainer actions,

and thirty days' notice before any orders were entered in those actions. Petitioners' claims therefore lack merit.

FACTUAL BACKGROUND AND PROCEDURAL POSTURE

Petitioners Pam Bonner and George Anthony are residential tenants of the James River Pointe apartment complex. A80, A94.[1] Both were hand-delivered a "5-Day Notice for Failure to Pay Rent & 30 Day Notice to Vacate" on September 7, 2022, advising them that if each did not pay the total amount of rent due within five days of the notice, AP Aden Park LLC—the legal entity doing business as James River Pointe—would terminate their respective rental agreements and may file an unlawful detainer actions. A80, A89, A94, A101. The notices further advised that failure to pay the rent would result in their being "required to vacate the premises upon service by the sheriff with a writ of eviction 30 or more days after the date of this notice." A89, A101. AP Aden Park LLC filed unlawful detainer actions against both Bonner and Anthony five days later, on September 12, 2022, with a hearing

[1] The notation "A##" refers to materials appearing in Petitioners' "Appendix to Petition for Prohibition."

date of October 7, 2022 in Richmond City General District Court. A81, A91, A95, A103.

The general district court heard both cases on October 7, 2022, and entered judgment for AP Aden Park LLC in each case, awarding it possession and damages. Respondents' Exh. 1 (Richmond City General District Court civil case details for case nos. GV22015462-00 (Bonner) and GV22015439-00 (Anthony)). Respondents have not provided this Court with proof that they raised any arguments relating to the CARES Act in defending against the unlawful detainer actions. At the time of filing this response, court records show that neither Bonner nor Anthony have appealed, nor has a writ of eviction issued in either case. Respondents' Exh. 1.

Petitioners point to other unlawful detainer hearings in Richmond City General District Court, involving different parties, in which the court denied motions to dismiss based on arguments that CARES Act preempted the five-day pre-filing notice requirement under Code § 55.1-1245(F) with a thirty-day pre-filing notice period. Mem. L. at 8–10; A6, A43–49, A110–11. In those cases, the court held that "the plain

language of the CARES Act is really the Court's lodestar," and the statute's plain language provides "that the lessor of a covered dwelling unit may not require the tenant to vacate" without 30 days' notice. A47. The court held that "requiring a tenant to vacate is not the same as filing an action in this court"; a tenant is not required to vacate until, at the earliest, "the order of possession" is entered for the landlord. A48.

Petitioners do not contend that they filed motions or otherwise raised any arguments in the general district court in their own unlawful detainer actions that their landlord "failed to comply with the notice requirement" in the CARES Act. A21; see generally A19–29, A39–42, A110–11. Nor did they appeal the general district court's judgment against them. Respondents' Exh. 1. Instead, Petitioners filed a Petition for Writ of Prohibition in this Court on October 5, 2022. Petitioners served Respondent Cecelia Garner, Clerk of the Richmond City General District Court, who accepted service on behalf of herself and Respondent Chief Judge David M. Hicks. Petitioners subsequently filed an unopposed motion for leave to file amended pleadings, which this Court granted on October 13, 2022, deeming the amended pleadings filed as of that date.

LEGAL STANDARD

A writ of prohibition is "an extraordinary remedy issued by a superior court to prevent an inferior court from exercising jurisdiction over matters not within its cognizance where damage or injustice is likely to follow from such action." *King v. Hening*, 203 Va. 582, 585 (1962); see generally Code §§ 8.01-644 and -645. A writ of prohibition orders the lower court "to cease from the prosecution of a suit . . . [that] does not belong to that jurisdiction, but to the cognizance of some other court." *James v. Stokes*, 77 Va. 225, 229 (1883).

"[T]he writ of prohibition does not lie to correct error, but to prevent the exercise of the jurisdiction of the court by the judge to whom it is directed, either where he has no jurisdiction at all, or is exceeding his jurisdiction." *Oxenham v. J.S.M.*, 256 Va. 180, 183 (1998) (quoting *Grief v. Kegley*, 115 Va. 552, 557 (1913)); see *Barrett*, 299 Va. at 31 (observing that petition for a writ of prohibition was properly dismissed when the petitioner "improperly sought to use the extraordinary writ as a substitute for appealing"). Thus, "if the court or judge has jurisdiction to enter any order in the proceeding sought to be prohibited, the writ does not lie." *Oxenham*, 256 Va. at 183. In addition, "it is always a sufficient

reason for withholding the writ, that the party aggrieved has another and complete remedy at law." *Bedford Cnty. Supervisors v. Wingfield*, 68 Va. (27 Gratt.) 329, 334 (1876). A writ of prohibition is not granted as a matter of right, but rather is issued in the exercise of "sound judicial discretion" and only "with great caution and forbearance." *Id.* at 333.

ARGUMENT

This Court should dismiss the petition for multiple independently sufficient reasons. Petitioners fail to state a claim for which prohibition can be granted because the General Assembly has conferred jurisdiction to hear unlawful-detainer cases on general district courts. Moreover, none of the relief Petitioners seek is available in this Court's original jurisdiction to issue writs of prohibition: they lack standing to assert other tenants' claims, and prohibition does not lie to undo the Richmond General District Court's prior adjudication of their unlawful detainer cases or as a substitute for an appeal. Finally, even if this Court were to consider Petitioners' argument on the merits, it is contrary to the plain language of the CARES Act.

I. Petitioners fail to state a claim for which prohibition lies

A writ of prohibition is unavailable to Petitioners because the Richmond City General District Court had jurisdiction to hear their unlawful detainer cases. *Elliott*, 236 Va. at 338. The petition should be denied for this reason alone.

"If the court or judge has jurisdiction to enter any order in the proceeding sought to be prohibited, the writ does not lie." *Elliott*, 236 Va. at 338 (quoting *Grief v. Kegley*, 115 Va. 552, 557 (1913)). "Jurisdiction is 'the power to adjudicate a case upon the merits and dispose of it.'" *Oxenham*, 256 Va. at 184 (quoting *County Sch. Bd. v. Snead*, 198 Va. 100, 107 (1956)). If the lower court has "jurisdiction of the subject matter of the controversy, jurisdiction of the parties, and the amount in dispute is within the monetary limits of the court's power," then "a mistaken exercise of that jurisdiction does not justify resort to the remedy of prohibition." *Elliott*, 236 Va. at 338. In other words, "the writ of prohibition does not lie to prevent a subordinate court from deciding erroneously, or from enforcing an erroneous judgment, in a case in which it has a right to adjudicate." *Snead*, 198 Va. at 107 (quoting *Grigg v. Dalsheimer*, 88 Va. 508, 510 (1891)).

It is undisputed that Virginia's general district courts have jurisdiction over unlawful detainer cases. Code §§ 8.01-126; 16.1-77(3); Am. Mem. L. at 13 ("[Virginia] Code §§ 16.1-77(3) and 8.01-126 confer upon general district courts subject matter jurisdiction to try actions for unlawful detainer." (quoting *Parrish v. Fed. Nat'l Mortg. Ass'n*, 292 Va. 44, 50 (2016))). This Court has therefore held that prohibition does not lie against a general district court adjudicating an unlawful detainer case because, "[w]ithout question, the district court and the judge had jurisdiction over the subject matter, the parties, and the amount in dispute in the unlawful detainer actions." *Elliott*, 236 Va. at 339.

Elliot controls this case. Because the Richmond City General District Court had jurisdiction over Petitioners' unlawful-detainer cases and had the power to enter orders in those cases, prohibition plainly does not lie. *Elliott*, 236 Va. at 339; Respondents' Exh. 1; Code § 16.1-77; see also, *e.g.*, *In re Commonwealth's Attorney*, 265 Va. 313, 317 (2003) (holding prohibition did not lie in petition arising from grand larceny cases because "[c]ircuit courts 'have original jurisdiction of all indictments for felonies and of presentments, informations and indictments for misdemeanors'" (quoting Code § 17.1-513)); *In re Johnston*, 3

Va. App. 492, 497 (1986) (holding prohibition did not lie in petition arising from an interstate custody proceeding because "the juvenile and domestic relations district courts of Virginia have general jurisdiction over all proceedings involving the custody, visitation, support, control or disposition of a child . . . ").

Petitioners' claim "purely and simply is over the legal correctness" of the general district court's possession orders. *Elliott*, 236 Va. at 339. Petitioners contend that the general district court should not have entered the possession orders, and should instead have dismissed the complaints, because the CARES Act preempts Virginia's five-day pre-filing notice requirement for unlawful detainer cases. Am. Mem. L. at 16–21. They attempt to frame prohibition as the appropriate remedy by arguing that 15 U.S.C. § 9058(c)(1) operates as a jurisdictional bar to bringing unlawful detainer cases before the thirty-day notice period elapses. Am. Mem. L. at 20. But federal preemption is an affirmative defense; it does not deprive the general district court of subject-matter jurisdiction over the suits. *Anthony v. Verizon Virginia, Inc.*, 288 Va. 20, 30 (2014) ("[O]rdinary preemption . . . serves as a substantive defense to state law claims."); see also *Skidmore v. Norfolk S. Ry. Co.*, 1 F.4th 206, 212 (4th

Cir. 2021) (observing that "preemption . . . operates only as a defense against a claim's merits).

As Petitioners correctly acknowledge, the CARES Act at most provides a defense to unlawful detainer actions—it is not a federally imposed jurisdictional bar. Am. Mem. L. at 16 ("By requiring a 30-day notice to vacate, Congress intended to provide tenants with a defense in state court eviction proceedings."). The CARES Act's notice requirement is a "claim-processing rule[] . . . that seek[s] to promote the orderly progress of litigation by requiring that the parties take certain procedural steps at certain specified times" and is thus "[a]mong the types of rules that should not be described as jurisdictional." *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011); see also *Union Pac. R. Co. v. Brotherhood of Locomotive Engineers & Trainmen*, 558 U.S. 67, 81–82 (2009) (distinguishing between mandatory rules that govern a tribunal's power to hear a case and claim-processing rules that do not "reduce the adjudicatory domain of a tribunal" while cautioning "against profligate use of the term ['jurisdiction']").

Nothing in the language of 15 U.S.C. § 9058(c)(1) indicates that it affects the subject-matter jurisdiction of state courts. See *Reed Elsevier,*

Inc. v. Muchnick, 559 U.S. 154, 161–62 (2010) ("[W]hen Congress does not rank a statutory limitation . . . as jurisdictional, courts should treat the restriction as nonjurisdictional in character." (quoting *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 516 (2006))). Nonjurisdictional rules—"even if important and mandatory"—"should not be given the jurisdictional brand." *Henderson*, 562 U.S. at 435.

Indeed, it would be an extraordinary extension of federal power if Congress had intended the CARES Act to oust state courts of their subject-matter jurisdiction over certain state-law eviction cases. See Josh Blackman, *State Judicial Sovereignty*, 2016 U. Ill. L. Rev. 2033, 2125–26 (2016) (observing that Congress's power over state court jurisdiction is "limited to items generally thought to be within the natural orbit of federal power" such that, "[c]onsistent with the Court's longstanding precedents, Congress would lack the power to either enlarge or contract a state court's jurisdiction" over matters "traditionally within the state police power").

At bottom, prohibition does not lie in this case because Petitioners' CARES Act argument is not jurisdictional but is rather a defense that must be litigated before the trial court and appealed in the ordinary

course. *E.g.*, *Oxenham*, 256 Va. at 183. "Whatever the ultimate answer may be to this underlying [preemption] question," "the district judge's error, if any, may not be adjudicated in a prohibition proceeding." *Elliott*, 236 Va. at 339. Because the Richmond City General District Court had jurisdiction over the unlawful detainer actions, a writ of prohibition does not lie, and this Court should dismiss the petition. *Id.* at 338.

II. The relief Petitioners seek is not available in this Court's original prohibition jurisdiction

Prohibition is also an improper remedy here because Petitioners cannot raise the rights of other tenants not before the Court, nor can they use prohibition to undo actions already taken in their own cases or as a substitute for an appeal. The petition should be dismissed for these reasons.

First, Petitioners' request for a writ of prohibition applying to "the 196 unlawful detainer actions" filed by Aden Park, and "any other unlawful detainer actions," Am. Pet. at 9–10; Am. Mem. L. at 26, is improper because Petitioners cannot raise the rights of others. A petition for a writ of prohibition is not a substitute for a class action. It is a limited proceeding that "must be made . . . by the party who has been aggrieved." *Adams v. Jennings*, 103 Va. 579, 583 (1905).

"The Commonwealth's third party standing exceptions are much narrower than those found in the federal system. . . . 'Simply put, one cannot raise third party rights.'" *Hawkins v. Grese*, 68 Va. App. 462, 480–81 (2018) (quoting *Tackett v. Arlington Cnty. Dep't of Human Servs.*, 62 Va. App. 296, 325 (2013)); see generally *Allen v. Wright*, 468 U.S. 737, 751 (1984) (noting "the general prohibition on a litigant's raising another person's legal rights"). Petitioners lack standing to seek prohibition on behalf of "other similarly situated tenants." Am. Pet. at 9–10; Am. Mem. L. at 26.

Petitioners' request that this Court direct the general district court to require affidavits before issuing summons in unlawful detainer cases is likewise improper. Am. Pet. at 10; Am. Mem. L. at 21–26. Prohibition is not a means by which this Court can impose procedural rules by which lower courts process particular types of cases. Prohibition lies only "to redress the grievance growing out of an encroachment of jurisdiction." *Elliott*, 236 Va. at 338 (quoting *James*, 77 Va. at 229). Systemic policy changes fall instead within this Court's authority to "formulate rules of practice and procedure for the general district courts . . . subject to revision by the General Assembly." Code § 16.1-69.32.

Second, the request for prohibition as to Petitioners' own cases also fails. Petitioners' unlawful detainer cases have already been heard and adjudicated, and "prohibition clearly does not lie" to undo completed acts. *In re Commonwealth of Virginia*, 278 Va. 1, 17 (2009); see also *In re Dep't of Corr.*, 222 Va. 454, 461 (1981) ("The writ may be used to prevent the exercise of assumed jurisdiction of the court by the judge to whom it is directed, . . . but it may not be used to correct error already committed."). A writ of prohibition "commands the person to whom it is directed not to do something which . . . the court is informed he is about to do." *In re Commonwealth*, 278 Va. at 17 (quoting *In re Dep't of Corr.*, 222 Va. at 461). If that act is "already done, it is manifest the writ of prohibition cannot undo it, for that would require an affirmative act; and the only effect of a writ of prohibition is to suspend all action, and to prevent any further proceeding in the prohibited direction." *Id.* (quoting *In re Dep't of Corr.*, 222 Va. at 461). As such, the Supreme Court has consistently held that "prohibition . . . will [not] lie to undo acts already done." *In re Commonwealth's Attorney*, 265 Va. at 319 n.4.

The Richmond City General District Court heard both Petitioners' unlawful detainer cases on October 7, 2022, and it entered judgment

for, and awarded possession to, the landlord. Respondents' Exh. 1. Entry of these judgments "is an accomplished fact; thus, the time for challenging [them] in a petition for a writ of prohibition has passed." *In re Dep't of Corr.*, 222 Va. at 461; see *In re Commonwealth*, 278 Va. at 17 (holding that the trial court's entry of "final judgment . . . is an act 'already done' and a petition for a writ of prohibition cannot be used to vacate or 'undo' that final judgment"). Prohibition therefore does not lie for their claims.

Relatedly, prohibition may not be used as a substitute for an appeal to correct errors. *Rollins v. Bazile*, 205 Va. 613, 616 (1964); see *Page v. Clopton*, 71 Va. (30 Gratt.) 415, 418 (1878). Prohibition is available only "where none of the ordinary remedies provided by law are applicable." *Wingfield*, 68 Va. (27 Gratt.) at 333. If the aggrieved party "has another and complete remedy at law," then prohibition will not issue. *Id.* at 334. Here, Petitioners could appeal the Richmond City General District Court's judgments in their unlawful-detainer cases de novo to the Richmond City Circuit Court. See Code §§ 8.01-129 (providing for appeals of right in unlawful-detainer cases to the circuit court); 16.1-106(A) (providing that such appeals "shall be heard de novo").

The availability of an appeal to the circuit court precludes prohibition relief. Prohibition is only proper when a lower court usurps its jurisdiction, "by which a defendant may be deprived . . . of his right to an appeal or a writ of error." *Adams*, 103 Va. at 579. Where a petitioner has a right to appeal, prohibition does not lie. *In re Johnston*, 3 Va. App. at 497 (holding a writ of prohibition unavailable because "[i]f [petitioner] had been aggrieved by the decision of the court, he had an absolute right of appeal to the circuit court, and an appeal of right from the circuit court to this court upon the merits"); see generally Kent Sinclair, *Sinclair on Virginia Remedies* § 77-1[D] (2022) ("[A]vailability of a regular appeal obviates the need for a writ of prohibition where the wrong can be corrected in the usual manner by the appellate court.").

Petitioners essentially acknowledge that they seek a writ of prohibition in lieu of appealing. Am. Mem. L. at 10–11. They contend that doing so is appropriate because the statutory appeal requirements for unlawful detainer cases are overly exacting. Am. Mem. L. at 10–11 (citing Code § 16.1-107(B) (requiring appeal bond for indigent persons in "action[s] involving . . . recovering rents")). These requirements, however, were enacted by the General Assembly exercising its "dominant role in

articulat[ing] . . . public policy in the Commonwealth of Virginia." *Howell v. McAuliffe*, 292 Va. 320, 326 (2016). "[T]his Court has no authority to judge the wisdom or propriety of a statute because, as between the legislature and the judiciary, 'the legislature, not the judiciary, is the sole "author of public policy"'" and is "directly accountable to the electorate." *Taylor v. Northam*, 300 Va. 230, 253 (2021) (quoting *Tvardek v. Powhatan Vill. Homeowners Ass'n*, 291 Va. 269, 280 (2016), and *Howell*, 292 Va. at 326); see *Marshall v. Northern Va. Transp. Auth.*, 275 Va. 419, 427 (2008) ("[T]he wisdom and the propriety of a statute are matters within the province of the legislature."). Policy objections to the appellate procedures enacted by the General Assembly cannot convert prohibition into a substitute for an appeal.

The availability of an appeal to the circuit court precludes the extraordinary remedy of prohibition. *In re Johnston*, 3 Va. App. at 497–98.

III. Petitioners' argument is contrary to the plain language of the CARES Act

This Court need not, and should not, reach the merits of Petitioners' CARES Act argument because prohibition is plainly not available here. *E.g.*, *Rollins*, 205 Va. at 616; see *supra* Parts I–II. Petitioners' pro-

posed interpretation of the CARES Act's notice provision is properly resolved in the ordinary course of appeal. But even if this Court were to consider Petitioners' argument on the merits, it would fail because it is contrary to the plain language of the CARES Act.

Petitioners contend that the CARES Act, 15 U.S.C. § 9058(c)(1), prohibits a landlord of a covered property from filing an unlawful detainer action until at least thirty days after the landlord provides notice to vacate. Am. Pet. at 3–5; Am. Mem. L. at 16, 20. They further argue that this thirty-day notice requirement preempts the five-day notice requirement under Code § 55.1-1245(F). Am. Mem. L. at 16, 19–21. Petitioners' claim fails, however, because it is contrary to the plain language of the CARES Act, which requires thirty days' notice before *vacating*, not before filing suit. 15 U.S.C. § 9058(c)(1).

Under Virginia law, the process leading to a residential unlawful-detainer action begins when a landlord serves a tenant in default of rent with written notice "notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental agreement if the rent is not paid within [a] five-day period" after the notice is served. Code § 55.1-1245(F). If the tenant fails to pay the rent within that five-day

period, "the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251." *Id.* Code § 55.1-1251, in turn, provides that "[i]f the rental agreement is terminated, the landlord may have a claim for possession and for rent . . . and such claims may be enforced, without limitation, by initiating an action for unlawful entry or detainer." Virginia law thus requires five days' written notice before an unlawful detainer action may be filed.

The CARES Act does not preempt this five-day notice requirement. The CARES Act states: "The lessor of a covered dwelling unit . . . may not *require the tenant to vacate* the covered dwelling unit before the date that is 30 days after the date on which the lessor provides the tenant with a notice to vacate." 15 U.S.C. § 9058(c)(1) (emphasis added). This language addresses only when a landlord may "require the tenant to vacate"—it has nothing to do with when a landlord may begin a legal process that may ultimately result in eviction.

This distinction is made clear by the immediately preceding provision of the CARES Act. This provision (which has expired) imposed a moratorium on eviction proceedings by forbidding landlords from "*initiat*[*ing*] *a legal action* to recover possession of the covered dwelling

from the tenant for nonpayment of rent or other fees or charges" within 120 days of the effective date of the CARES Act. 15 U.S.C. § 9058(b) (emphasis added). Section 9058(c), by contrast, says nothing about initiating legal actions; it requires only that a landlord provide thirty days' notice before a tenant is required to vacate a dwelling. Subsection (b) makes clear that Congress knew how to address rules on filing actions to evict tenants, but it did not do so in subsection (c). When the legislature "uses two different terms in the same act, it is presumed to mean two different things." *Sauder v. Ferguson*, 289 Va. 449, 458 (2015) (quoting *Forst v. Rockingham Poultry Mktg. Coop.*, 222 Va. 270, 278 (1981)). "This difference in wording between subsection B and subsection C reflects a legislative choice" to which this Court is "bound to give effect . . . when construing the statute." *Shoemaker v. Funkhouser*, 299 Va. 471, 486 (2021); see *City of Richmond v. Va. Elec. & Power Co.*, 292 Va. 70, 75 (2016) (same). This Court should respect Congress's choices embodied in the differently worded subsections (b) and (c) by interpreting subsection (c) to require thirty days' notice before a tenant is required to vacate an apartment rather than before a landlord may file an unlawful detainer action.

Thus, subsection (c) at most prevents a landlord of a covered dwelling from requiring a tenant to vacate that dwelling until the thirty-day notice period elapses. It does not preempt Virginia law, which requires a five-day period to elapse before a landlord may initiate an unlawful detainer action. Here, Petitioners allege that their landlord complied with both the requirements of Virginia law and the CARES Act by providing five days' notice before initiating the unlawful detainer action and thirty days' notice before they were required to vacate the dwelling. See *supra* Factual Background and Procedural Posture. Accordingly, the legal theory underlying Petitioners' claims for relief cannot succeed.

CONCLUSION

For the foregoing reasons, this Court should grant the motion to dismiss Petitioners' Amended Petition for Writ of Prohibition. The record is sufficient for this Court to rule upon the petition, and there is no need for an evidentiary hearing. Any claim not specifically admitted is denied.

Respectfully submitted,

Hon. David M. Hicks
Cecelia V. Garner

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October 28, 2022

Counsel for Respondents

CERTIFICATE OF SERVICE AND FILING

I certify that on October 28, 2022, this document was filed electronically with the Court through VACES. This brief complies with Rule 5:7(b)(7) because the portion subject to that rule does not exceed the longer of 50 pages or 8,750 words. Copies were transmitted by email to:

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EXHIBIT 1

Richmond City General District Court

760G - Richmond John Marshall GDC, 400 N. 9th St, Richmond, VA 23219

Civil Case Details

Richmond City General Dis

Name Search
Case Number Search
Hearing Date Search
Service/Process Search

Name Search
Case Number Search
Hearing Date Search
Service/Process Search

Case Information

Case Number :	GV22015462-00	**Filed Date :**	09/12/2022
Case Type :	Unlawful Detainer	**Debt Type :**	

Plaintiff Information

Name	DBA/TA	Address	Judgment	Attorney
AP ADEN PARK LLC	JAMES RIVER POINTE	RICHMOND, VA 23225	Plaintiff	SOLODAR & SOLODAR

Defendant Information

Name	DBA/TA	Address	Judgment	Attorney
BONNER, PAM		RICHMOND, VA 23225	Plaintiff	NONE

Hearing Information

Date	Time	Result	Hearing Type	Courtroom
10/07/2022	11:00 AM	Judgment		JM02

Service/Process

Reports

Judgment Information

Judgment :	Plaintiff	**Costs :**	$63.00	**Attorney Fees :**	150.00
Principal Amount :	$4,292.52	**Other Amount :**	$1,553.07	**Interest Award :**	6.00% FROM 10072022
Possession :	Immediate	**Writ of Eviction Issued Date :**		**Writ of Fieri Facias Issued Date :**	
Homestead Exemption Waived :					
Is Judgment Satisfied :		**Date Satisfaction Filed :**		**Other Awarded :**	
Further Case Information :					

Garnishment Information

Appeal Information

Appeal Date :		**Appealed By :**	

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Richmond City General District Court

760G - Richmond John Marshall GDC, 400 N. 9th St, Richmond, VA 23219

Civil Case Details

Richmond City General Dis

Name Search
Case Number Search
Hearing Date Search
Service/Process Search

Name Search
Case Number Search
Hearing Date Search
Service/Process Search

Case Information

Case Number :	GV22015439-00	**Filed Date :**	09/12/2022
Case Type :	Unlawful Detainer	**Debt Type :**	

Plaintiff Information

Name	DBA/TA	Address	Judgment	Attorney
AP ADEN PARK LLC	JAMES RIVER POINTE	RICHMOND, VA 23225	Plaintiff	SOLODAR & SOLODAR

Defendant Information

Name	DBA/TA	Address	Judgment	Attorney
ANTHONY, GEORGE		RICHMOND, VA 23225	Plaintiff	NONE
BROWN, KALONJI		RICHMOND, VA 23225	Plaintiff	NONE

Hearing Information

Date	Time	Result	Hearing Type	Courtroom
10/07/2022	11:00 AM	Judgment		JM02

Service/Process

Reports

Judgment Information

Judgment :	Plaintiff	**Costs :**	$63.00	**Attorney Fees :**	
Principal Amount :	$3,756.00	**Other Amount :**	$1,493.74	**Interest Award :**	6.00% FROM 10072022
Possession :	Immediate	**Writ of Eviction Issued Date :**		**Writ of Fieri Facias Issued Date :**	
Homestead Exemption Waived :					
Is Judgment Satisfied :		**Date Satisfaction Filed :**		**Other Awarded :**	
Further Case Information :					

Garnishment Information

Appeal Information

Appeal Date :		**Appealed By :**	

Back to Search Results

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF FAIRFAX COUNTY

_____,
PLAINTIFF

VS CASE NO._____

_____, RETURN DATE: _____
DEFENDANT.

SCHEDULING ORDER/PROCEDURE TO OBTAIN A LONG TRIAL DATE

1. This matter is scheduled for a **pre-trial conference** on _____, at **9:30AM** (approximately 4-6 months from Return Date).
2. A Bill of Particulars is due _____.
3. An Answer & Grounds of Defense is due _____.
4. The parties having indicated that a counterclaim or crossclaim will be filed, that pleading is due _____.
5. An Answer and Grounds of Defense to the counterclaim or crossclaim is due _____.
6. By the pretrial conference, all demurrers, summary judgment motions, pleas in bar or other dispositive motions, and all subpoena duces tecum requests and any objections, are to be completed/adjudicated in full.
7. As a docket control measure and to ensure the case is ripe for trial, the parties will file and exchange a list of exhibits and witnesses for the anticipated trial at the pre-trial conference but the exhibits themselves shall not then be filed with the court. No substantive rights accrue as a result of this requirement and the admissibility of evidence will be governed solely by the Rules of Evidence and the Rules of Court. **The parties' failure to file/exchange witness and exhibit lists will result in the status date being continued to another date chosen by the court.**
8. On or before the pretrial conference, counsel will have conferred or attempted to confer, in good faith, with the other party or parties to resolve this action.
9. At the pretrial conference, **if the above requirements have been met**, a long trial date will be set within sixty to ninety days.
10. Once a trial date has been set, any interpreters, if needed, *including Spanish Interpreters*, will be requested following current court procedures at least 2 weeks prior to the trial date.
11. If courtroom technology is needed for evidentiary purposes, it will be requested in writing 30 days before the trial date. If any parties are to appear remotely for the trial, the court must receive the Motion for Remote Hearing form, completed in its entirety, and following all instructions contained within.
12. **Continuances from a long trial date will not be granted except for good cause shown and must be docketed for a motion in court.** Upon settlement of the case, counsel shall notify the Clerk by submission of a Final Order or Praecipe continuing the matter to the 2A docket for final disposition.

_____(Judge)

SEEN: _____ _____
Plaintiff/Counsel Defendant/Counsel