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SENATE BILL NO. 1104

Offered January 10, 2007

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A BILL to amend and reenact §§ 19.2-182.2, 19.2-182.5, 19.2-182.6, 19.2-182.7, 19.2-182.10, and 19.2-182.11 of the Code of Virginia, relating to the disposition of persons acquitted by reason of insanity.

Patrons—Puller and Lambert

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-182.2, 19.2-182.5, 19.2-182.6, 19.2-182.7, 19.2-182.10, and 19.2-182.11 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-182.2. Verdict of acquittal by reason of insanity to state the fact; temporary custody and evaluation.

When the defense is insanity of the defendant at the time the offense was committed, the jurors shall be instructed, if they acquit him on that ground, to state the fact with their verdict. The court shall place the person so acquitted ("the acquittee") in temporary custody of the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services (hereinafter referred to in this chapter as the "Commissioner") for evaluation as to whether the acquittee may be released with or without conditions or requires commitment. The evaluation shall be conducted by (i) one psychiatrist and (ii) one clinical psychologist. The psychiatrist or clinical psychologist shall be skilled in the diagnosis of mental illness and mental retardation and qualified by training and experience to perform such evaluations. The Commissioner shall appoint both evaluators, at least one of whom shall not be employed by the hospital in which the acquittee is primarily confined. The evaluators shall determine whether the acquittee is currently mentally ill or mentally retarded and shall assess the acquittee and report on his condition and need for hospitalization with respect to the factors set forth in § 19.2-182.3. The evaluators shall conduct their examinations and report their findings separately within forty-five days of the Commissioner's assumption of custody. Copies of the report shall be sent to the acquittee's attorney, the attorney for the Commonwealth for the jurisdiction where the person was acquitted and the community services board ~~serving the locality where the acquittee was acquitted~~ *or behavioral health authority as designated by the Commissioner*. If either evaluator recommends conditional release or release without conditions of the acquittee, the court shall extend the evaluation period to permit the hospital in which the acquittee is confined and the appropriate community services board *or behavioral health authority* to jointly prepare a conditional release or discharge plan, as applicable, prior to the hearing.

§ 19.2-182.5. Review of continuation of confinement hearing; procedure and reports; disposition.

A. The committing court shall conduct a hearing twelve months after the date of commitment to assess the need for inpatient hospitalization of each acquittee who is acquitted of a felony by reason of insanity. A hearing for assessment shall be conducted at yearly intervals for five years and at biennial intervals thereafter. The court shall schedule the matter for hearing as soon as possible after it becomes due, giving the matter priority over all pending matters before the court.

B. Prior to the hearing, the Commissioner shall provide to the court a report evaluating the acquittee's condition and recommending treatment, to be prepared by a psychiatrist or a psychologist. The psychologist who prepares the report shall be a clinical psychologist and any evaluating psychiatrist or clinical psychologist shall be skilled in the diagnosis of mental illness and qualified by training and experience to perform forensic evaluations. If the examiner recommends release or the acquittee requests release, the acquittee's condition and need for inpatient hospitalization shall be evaluated by a second person with such credentials who is not currently treating the acquittee. A copy of any report submitted pursuant to this subsection shall be sent to the attorney for the Commonwealth for the jurisdiction from which the acquittee was committed.

C. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. Written notice of the hearing shall be provided to the attorney for the Commonwealth for the committing jurisdiction. The hearing is a civil proceeding.

According to the determination of the court following the hearing, and based upon the report and other evidence provided at the hearing, the court shall (i) release the acquittee from confinement if he does not need inpatient hospitalization and does not meet the criteria for conditional release set forth in

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§ 19.2-182.7, provided the court has approved a discharge plan prepared jointly by the hospital staff and the appropriate community services board *or behavioral health authority*; (ii) place the acquittee on conditional release if he meets the criteria for conditional release, and the court has approved a conditional release plan prepared jointly by the hospital staff and the appropriate community services board *or behavioral health authority*; or (iii) order that he remain in the custody of the Commissioner if he continues to require inpatient hospitalization based on consideration of the factors set forth in § 19.2-182.3.

D. An acquittee who is found not guilty of a misdemeanor by reason of insanity on or after July 1, 2002, shall remain in the custody of the Commissioner pursuant to this chapter for a period not to exceed one year from the date of acquittal. If, prior to or at the conclusion of one year, the Commissioner determines that the acquittee meets the criteria for conditional release or release without conditions pursuant to § 19.2-182.7, emergency custody pursuant to § 37.2-808, temporary detention pursuant to §§ 37.2-809 to 37.2-813, or involuntary commitment pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, he shall petition the committing court. Written notice of an acquittee's scheduled release shall be provided by the Commissioner to the attorney for the Commonwealth for the committing jurisdiction not less than thirty days prior to the scheduled release. The Commissioner's duty to file a petition upon such determination shall not preclude the ability of any other person meeting the requirements of § 37.2-808 to file the petition.

§ 19.2-182.6. Petition for release; conditional release hearing; notice; disposition.

A. The Commissioner may petition the committing court for conditional or unconditional release of the acquittee at any time he believes the acquittee no longer needs hospitalization. The petition shall be accompanied by a report of clinical findings supporting the petition and by a conditional release or discharge plan, as applicable, prepared jointly by the hospital and the appropriate community services board *or behavioral health authority*. The acquittee may petition the committing court for release only once in each year in which no annual judicial review is required pursuant to § 19.2-182.5. The party petitioning for release shall transmit a copy of the petition to the attorney for the Commonwealth for the committing jurisdiction.

B. Upon receipt of a petition for release, the court shall order the Commissioner to appoint two persons in the same manner as set forth in § 19.2-182.2 to assess and report on the acquittee's need for inpatient hospitalization by reviewing his condition with respect to the factors set forth in § 19.2-182.3. The evaluators shall conduct their evaluations and report their finding in accordance with the provisions of § 19.2-182.2, except that the evaluations shall be completed and findings reported within forty-five days of issuance of the court's order for evaluation.

The Commissioner shall give notice of the hearing to any victim of the act resulting in the charges on which the acquittee was acquitted or the next of kin of the victim at the last known address, provided the person submits a written request for such notification to the Commissioner.

C. Upon receipt of the reports of evaluation, the court shall conduct a hearing on the petition. The hearing shall be scheduled on an expedited basis and given priority over other civil matters before the court. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses. Written notice of the hearing shall be provided to the attorney for the Commonwealth for the committing jurisdiction. The hearing is a civil proceeding.

At the conclusion of the hearing, based upon the report and other evidence provided at the hearing, the court shall order the acquittee (i) released from confinement if he does not need inpatient hospitalization and does not meet the criteria for conditional release set forth in § 19.2-182.3, provided the court has approved a discharge plan prepared jointly by the hospital and the appropriate community services board *or behavioral health authority*; (ii) placed on conditional release if he meets the criteria for such release as set forth in § 19.2-182.7, and the court has approved a conditional release plan prepared jointly by the hospital and the appropriate community services board *or behavioral health authority*; or (iii) retained in the custody of the Commissioner if he continues to require inpatient hospitalization based on consideration of the factors set forth in § 19.2-182.3.

D. Persons committed pursuant to this chapter shall be released only in accordance with the procedures set forth governing release and conditional release.

§ 19.2-182.7. Conditional release; criteria; conditions; reports.

At any time the court considers the acquittee's need for inpatient hospitalization pursuant to this chapter, it shall place the acquittee on conditional release if it finds that (i) based on consideration of the factors which the court must consider in its commitment decision, he does not need inpatient hospitalization but needs outpatient treatment or monitoring to prevent his condition from deteriorating to a degree that he would need inpatient hospitalization; (ii) appropriate outpatient supervision and treatment are reasonably available; (iii) there is significant reason to believe that the acquittee, if conditionally released, would comply with the conditions specified; and (iv) conditional release will not present an undue risk to public safety. The court shall subject a conditionally released acquittee to such

orders and conditions it deems will best meet the acquittee's need for treatment and supervision and best serve the interests of justice and society.

The community services board ~~serving the locality in which the acquittee will reside upon release~~ *or behavioral health authority as designated by the Commissioner* shall implement the court's conditional release orders and shall submit written reports to the court on the acquittee's progress and adjustment in the community no less frequently than every six months.

After a finding by the court that the acquittee has violated the conditions of his release but does not require inpatient hospitalization pursuant to § 19.2-182.8, the court may hold the acquittee in contempt of court for violation of the conditional release order.

§ 19.2-182.10. Release of person whose conditional release was revoked.

If an acquittee is returned to the custody of the Commissioner for inpatient treatment pursuant to revocation proceedings, and his condition improves to the degree that, within 60 days of resumption of custody following the hearing, the acquittee, in the opinion of hospital staff treating the acquittee and the supervising community services board *or behavioral health authority*, is an appropriate candidate for conditional release, he may be, with the approval of the court, conditionally released as if revocation had not taken place. If treatment is required for longer than 60 days, the acquittee shall be returned to the custody of the Commissioner for a period of hospitalization and treatment which is governed by the provisions of this chapter applicable to committed acquittees.

§ 19.2-182.11. Modification or removal of conditions; notice; objections; review.

A. The committing court may modify conditions of release or remove conditions placed on release pursuant to § 19.2-182.7, upon petition of the supervising community services board *or behavioral health authority*, the attorney for the Commonwealth, or the acquittee or upon its own motion based on reports of the supervising community services board *or behavioral health authority*. However, the acquittee may petition only annually commencing six months after the conditional release order is issued. Upon petition, the court shall require the supervising community services board *or behavioral health authority* to provide a report on the acquittee's progress while on conditional release.

B. As it deems appropriate based on the community services board's *or behavioral health authority's* report and any other evidence provided to it, the court may issue a proposed order for modification or removal of conditions. The court shall provide notice of the order, and their right to object to it within ten days of its issuance, to the acquittee, the supervising community services board *or behavioral health authority* and the attorney for the Commonwealth for the committing jurisdiction and for the jurisdiction where the acquittee is residing on conditional release. The proposed order shall become final if no objection is filed within ten days of its issuance. If an objection is so filed, the court shall conduct a hearing at which the acquittee, the attorney for the Commonwealth, and the supervising community services board *or behavioral health authority* have an opportunity to present evidence challenging the proposed order. At the conclusion of the hearing, the court shall issue an order specifying conditions of release or removing existing conditions of release.