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SENATE BILL NO. 35

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 8, 2006)

(Patron Prior to Substitute—Senator Reynolds)

A *BILL to amend and reenact § 19.2-182.4 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-182.4:1, relating to not guilty by reason of insanity; temporary visits.*

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-182.4 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-182.4:1 as follows:

§ 19.2-182.4. Confinement and treatment; interfacility transfers; out-of-hospital visits; notice of change in treatment.

A. Upon commitment of an acquittee for inpatient hospitalization, the Commissioner shall determine the appropriate placement for him, based on his clinical needs and security requirements. The Commissioner may make interfacility transfers and treatment and management decisions regarding acquittees in his custody without obtaining prior approval of or review by the committing court. If the Commissioner is of the opinion that a temporary visit from the hospital would be therapeutic for the acquittee and that such visit would pose no substantial danger to others, the Commissioner may grant such visit not to exceed ~~forty-eight~~ 48 hours. The Commissioner shall notify the attorney for the Commonwealth for the committing jurisdiction in writing of changes in an acquittee's course of treatment which will involve authorization for the acquittee to leave the grounds of the hospital in which he is confined.

B. *Whenever authorization for a temporary visit will include unescorted community visits for acquittees who have been acquitted of a felony offense against the person punishable by more than five years in prison, notification shall be provided to the attorney for the Commonwealth and the acquittee's attorney at least 25 days prior to the planned date of the visit. The Commissioner shall also furnish the attorney for the Commonwealth and the acquittee's attorney with a copy of the risk management plan that has been developed by the acquittee's hospital for unescorted community visits. In the event that the attorney for the Commonwealth objects to the planned unescorted community visit for the acquittee, he may provide written notification of his objections to the Commissioner within 21 days of receipt of the notice. The Commissioner shall consider these objections in reviewing the decision to grant the unescorted community visit, and if the unescorted community visit is granted, provide a written response, including the final risk management plan, to the attorney for the Commonwealth and the acquittee's attorney, at least 21 days prior to the new planned date set for the acquittee's unescorted community visit. If the attorney for the Commonwealth continues to object to the unescorted community visit, he may petition the committing court for a hearing on the matter. The attorney for the Commonwealth shall provide the Commissioner and the acquittee's attorney with a copy of the petition. Unless the Commissioner receives a copy of a petition for a hearing on the matter prior to the planned date of the visit set forth in his written response, the Commissioner may permit the acquittee to proceed with the visit.*

C. *The Commissioner shall give notice of the granting of an unescorted community visit to any victim of a felony offense against the person punishable by more than five years in prison that resulted in the charges upon which the acquittee was acquitted, or the next of kin of the victim at the last known address, provided the person has submitted a written request for such notification to the Commissioner in advance of the granting of the unescorted community visit.*

§ 19.2-182.4:1. Review of objection of attorney for the Commonwealth to Commissioner's authorization of unescorted community visits.

A. Upon receipt from the attorney for the Commonwealth of a petition for a hearing to review his objection to the Commissioner's authorization of unescorted community visits to an acquittee who has been acquitted of a felony offense against the person punishable by more than five years in prison, the committing court shall conduct a hearing. The proceeding shall be a civil proceeding and the court shall schedule the matter for hearing as soon as possible after the filing of the petition, giving the matter priority over all pending matters before the court.

B. Prior to the hearing, the Commissioner shall provide the court with a report evaluating the acquittee's current condition, the reasons for granting the request, and the risk management plan that has been developed to provide for the safe completion of the unescorted visit by the acquittee. The report shall be prepared by a psychiatrist or a clinical psychologist skilled in the diagnosis of mental illness and qualified by training and experience to perform forensic evaluations.

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60 C. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at
61 the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the
62 right to introduce evidence and cross-examine witnesses at the hearing. The Commissioner shall also be
63 provided with notice of the hearing.

64 D. In considering the acquittee's eligibility for the requested unescorted community visit, the court
65 shall grant the visit if it finds that:

66 1. The risk management plan for the acquittee provides sufficient support and access to emergency
67 intervention, if needed; and

68 2. There is significant reason to believe that the acquittee, if granted the community visit, will
69 comply with the conditions specified.