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HOUSE BILL NO. 53

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 29, 2018)

(Patron Prior to Substitute—Delegate Hope)

A BILL to amend and reenact § 19.2-182.2 of the Code of Virginia, relating to persons acquitted by reason of insanity; evaluation.

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-182.2 of the Code of Virginia is 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 Behavioral Health and Developmental 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 court may authorize that the evaluation be conducted on an outpatient basis. If the court authorizes an outpatient evaluation, the Commissioner shall determine, on the basis of all information available, whether the evaluation shall be conducted on an outpatient basis or whether the acquittee shall be confined in a hospital for evaluation. If the court does not authorize an outpatient evaluation, the acquittee shall be confined in a hospital for evaluation. If an acquittee who is being evaluated on an outpatient basis fails to comply with such evaluation, the Commissioner shall petition the court for an order to confine the acquittee in a hospital for evaluation. A copy of the petition shall be sent to the acquittee's attorney and the attorney for the Commonwealth.* 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 intellectual disability and qualified by training and experience to perform such evaluations. The Commissioner shall appoint both evaluators. *In the case of an acquittee confined in a hospital, at least one of whom the evaluators shall not be employed by the hospital in which the acquittee is primarily confined. The evaluators shall determine whether the acquittee currently has mental illness or intellectual disability 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 45 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 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 (a) the hospital in which the acquittee is confined Department of Behavioral Health and Developmental Services and (b) the appropriate community services board or behavioral health authority to jointly prepare a conditional release or discharge plan, as applicable, prior to the hearing.*