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HOUSE BILL NO. 639

Offered January 8, 2020

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A BILL to amend and reenact §§ 19.2-182.3, 19.2-182.5, 19.2-182.6, and 19.2-182.8 of the Code of Virginia, relating to persons acquitted by reason of insanity; use of two-way electronic communications in proceedings.

Patron—Hurst

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-182.3, 19.2-182.5, 19.2-182.6, and 19.2-182.8 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-182.3. Commitment; civil proceedings.

Upon receipt of the evaluation report and, if applicable, a conditional release or discharge plan, the court shall schedule the matter for hearing on an expedited basis, giving the matter priority over other civil matters before the court, to determine the appropriate disposition of the acquittee. Except as otherwise ordered by the court, the attorney who represented the defendant at the criminal proceedings shall represent the acquittee through the proceedings pursuant to this section. The matter may be continued on motion of either party for good cause shown. 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. The hearing is a civil proceeding *and may be conducted using a two-way electronic video and audio communication system that meets the standards set forth in subsection B of § 19.2-3.1.*

At the conclusion of the hearing, the court shall commit the acquittee if it finds that he has mental illness or intellectual disability and is in need of inpatient hospitalization. For the purposes of this chapter, mental illness includes any mental illness, as defined in § 37.2-100, in a state of remission when the illness may, with reasonable probability, become active. The decision of the court shall be based upon consideration of the following factors:

1. To what extent the acquittee has mental illness or intellectual disability, as those terms are defined in § 37.2-100;

2. The likelihood that the acquittee will engage in conduct presenting a substantial risk of bodily harm to other persons or to himself in the foreseeable future;

3. The likelihood that the acquittee can be adequately controlled with supervision and treatment on an outpatient basis; and

4. Such other factors as the court deems relevant.

If the court determines that an acquittee does not need inpatient hospitalization solely because of treatment or habilitation he is currently receiving, but the court is not persuaded that the acquittee will continue to receive such treatment or habilitation, it may commit him for inpatient hospitalization. The court shall order the acquittee released with conditions pursuant to §§ 19.2-182.7, 19.2-182.8, and 19.2-182.9 if it finds that he is not in need of inpatient hospitalization but that he meets the criteria for conditional release set forth in § 19.2-182.7. If the court finds that the acquittee does not need inpatient hospitalization nor does he meet the criteria for conditional release, it shall release him without conditions, provided the court has approved a discharge plan prepared by the appropriate community services board or behavioral health authority in consultation with the appropriate hospital staff.

The court shall order that any person acquitted by reason of insanity and committed pursuant to this section who is sentenced to a term of incarceration for any other offense in the same proceeding or in any proceeding conducted prior to the proceeding in which the person is acquitted by reason of insanity complete any sentence imposed for such other offense prior to being placed in the custody of the Commissioner of Behavioral Health and Developmental Services until released from commitment pursuant to this chapter. The court shall order that any person acquitted by reason of insanity and committed pursuant to this section who is sentenced to a term of incarceration in any proceeding conducted during the period of commitment be transferred to the custody of the correctional facility where he is to serve his sentence, and, upon completion of his sentence, such person shall be placed in the custody of the Commissioner of Behavioral Health and Developmental Services until released from commitment pursuant to this chapter.

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

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

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

73 C. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at
74 the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right
75 to introduce evidence and cross-examine witnesses at the hearing. Written notice of the hearing shall be
76 provided to the attorney for the Commonwealth for the committing jurisdiction. The hearing is a civil
77 proceeding *and may be conducted using a two-way electronic video and audio communication system*
78 *that meets the standards set forth in subsection B of § 19.2-3.1.*

79 According to the determination of the court following the hearing, and based upon the report and
80 other evidence provided at the hearing, the court shall (i) release the acquittee from confinement if he
81 does not need inpatient hospitalization and does not meet the criteria for conditional release set forth in
82 § 19.2-182.7, provided the court has approved a discharge plan prepared jointly by the hospital staff and
83 the appropriate community services board or behavioral health authority; (ii) place the acquittee on
84 conditional release if he meets the criteria for conditional release, and the court has approved a
85 conditional release plan prepared jointly by the hospital staff and the appropriate community services
86 board or behavioral health authority; or (iii) order that he remain in the custody of the Commissioner if
87 he continues to require inpatient hospitalization based on consideration of the factors set forth in
88 § 19.2-182.3.

89 D. An acquittee who is found not guilty of a misdemeanor by reason of insanity on or after July 1,
90 2002, shall remain in the custody of the Commissioner pursuant to this chapter for a period not to
91 exceed one year from the date of acquittal. If, prior to or at the conclusion of one year, the
92 Commissioner determines that the acquittee meets the criteria for conditional release or release without
93 conditions pursuant to § 19.2-182.7, emergency custody pursuant to § 37.2-808, temporary detention
94 pursuant to §§ 37.2-809 to 37.2-813, or involuntary commitment pursuant to Article 5 (§ 37.2-814 et
95 seq.) of Chapter 8 of Title 37.2, he shall petition the committing court. Written notice of an acquittee's
96 scheduled release shall be provided by the Commissioner to the attorney for the Commonwealth for the
97 committing jurisdiction not less than thirty days prior to the scheduled release. The Commissioner's duty
98 to file a petition upon such determination shall not preclude the ability of any other person meeting the
99 requirements of § 37.2-808 to file the petition.

100 **§ 19.2-182.6. Petition for release; conditional release hearing; notice; disposition.**

101 A. The Commissioner may petition the committing court for conditional or unconditional release of
102 the acquittee at any time he believes the acquittee no longer needs hospitalization. The petition shall be
103 accompanied by a report of clinical findings supporting the petition with respect to the factors set forth
104 in § 19.2-182.3 and by a conditional release or discharge plan, as applicable, prepared jointly by the
105 hospital and the appropriate community services board or behavioral health authority. The acquittee may
106 petition the committing court for release only once in each year in which no annual judicial review is
107 required pursuant to § 19.2-182.5. The party petitioning for release shall transmit a copy of the petition
108 to the attorney for the Commonwealth for the committing jurisdiction.

109 B. 1. When a petition for release is made by the acquittee, the court shall order the Commissioner to
110 appoint two persons in the same manner as set forth in § 19.2-182.2 to assess and report on the
111 acquittee's need for inpatient hospitalization by reviewing his condition with respect to the factors set
112 forth in § 19.2-182.3. The evaluators shall conduct their evaluations and report their finding in
113 accordance with the provisions of § 19.2-182.2, except that the evaluations shall be completed and
114 findings reported within 45 days of issuance of the court's order for evaluation.

115 2. When a petition for release is made by the Commissioner no further evaluations of the acquittee
116 shall be required unless otherwise deemed necessary by the court. If the court determines that further
117 evaluation is necessary, the court shall order the Commissioner to appoint two persons in the same
118 manner as set forth in § 19.2-182.2 to assess and report on the acquittee's need for inpatient
119 hospitalization by reviewing his condition with respect to the factors set forth in § 19.2-182.3. The
120 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 45 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 *and may be conducted using a two-way electronic video and audio communication system that meets the standards set forth in subsection B of § 19.2-3.1.*

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.

§ 19.2-182.8. Revocation of conditional release.

If at any time the court that released an acquittee pursuant to § 19.2-182.7 finds reasonable ground to believe that an acquittee on conditional release (i) has violated the conditions of his release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and (ii) requires inpatient hospitalization, it may order an evaluation of the acquittee by a psychiatrist or clinical psychologist, provided the psychiatrist or clinical psychologist is qualified by training and experience to perform forensic evaluations. If the court, based on the evaluation and after hearing evidence on the issue, finds by a preponderance of the evidence that an acquittee on conditional release (a) has violated the conditions of his release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and (b) has mental illness or intellectual disability and requires inpatient hospitalization, the court may revoke the acquittee's conditional release and order him returned to the custody of the Commissioner.

At any hearing pursuant to this section, 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. The hearing shall be scheduled on an expedited basis and shall be given priority over other civil matters before the court. Written notice of the hearing shall be provided to the attorney for the Commonwealth for the committing jurisdiction. The hearing is a civil proceeding *and may be conducted using a two-way electronic video and audio communication system that meets the standards set forth in subsection B of § 19.2-3.1.*